

***United States Court of Appeals
for the
District of Columbia Circuit***



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517

JOINT APPENDIX

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23,455

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JUN 16 1970

GT&E COMMUNICATIONS INC., *Appellant*,

v.

FEDERAL COMMUNICATIONS COMMISSION, *Appellee*,

TELECABLE CORPORATION, *Intervenor*.

CLERK OF THE UNITED
STATES COURT OF APPEALS

On Appeal From Decision of the
Federal Communications Commission

United States Court of Appeals
for the District of Columbia Circuit

THEODORE F. BROPHY
GEORGE E. SHEETZER
730 Third Avenue
New York, New York 10017

DAVID H. LLOYD
FREDERICK B. ABRAMSON
1229 - 19th Street, N. W.
Washington, D. C. 20036

Attorneys for Appellant

Of Counsel:

ARNOLD & PORTER
1229 - 19th Street, N. W.
Washington, D. C. 20036

Of Counsel:

HOGAN & HARTSON
815 Connecticut Ave., N. W.
Washington, D. C. 20006

HENRY GELLER
General Counsel

JOHN H. CONLEY
Associate General Counsel
STUART F. FELDSTEIN
Counsel

Federal Communications
Commission
Washington, D. C. 20554

FILED JUN 23 1970

JAY E. RICKS
MARVIN J. DIAMOND
815 Connecticut Ave., N. W.
Washington, D. C. 20006
Attorneys for Intervenor

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IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23,455

GT&E COMMUNICATIONS INC., *Appellant,*

v.

FEDERAL COMMUNICATIONS COMMISSION, *Appellee,*
TELECABLE CORPORATION, *Intervenor.*

On Appeal From Decision of the
Federal Communications Commission

JOINT APPENDIX

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554

File No.

In the matter of

GT&E COMMUNICATIONS, INC.
Bloomington and Normal, Illinois

To: The Commission

Petition for Temporary and Immediate Ex Parte Relief

TeleCable Corporation hereby petitions the Commission for temporary and immediate ex parte relief to prohibit construction by GT&E Communications, Inc. of CATV facilities in Normal and Bloomington, Illinois. Relief is requested pursuant to Section 74.1109 of the Rules and Section 4(i) of the Communications Act of 1934, as amended (47 U.S.C. § 154(i)). In support whereof, it is shown:

1. TeleCable Corporation ("TeleCable"), a Virginia corporation, is engaged in operation of CATV systems in various communities in the United States. GT&E Communications, Inc. ("GT&E") is the franchisee of a CATV system in Bloomington and Normal, Illinois. It is wholly owned by General Telephone Company of Illinois ("General"), the operator of the telephone company serving Bloomington and Normal.

2. TeleCable is clearly an "interested person". TeleCable would have been the franchisee but for the award to GT&E, and therefore will suffer substantial economic injury if GT&E can construct and operate its CATV system (*cf.*, *FCC v. Saunders Bros. Radio Station*, 309 U.S. 470 (1940)), and TeleCable is already a party to the contest before the Commission over the issuance of a 214 certificate to General, a contest directly related to the instant matter. Therefore, TeleCable has standing to request relief under

Section 74.1109 of the Rules and directly pursuant to Section 4(i) of the Act.

3. The facts relating to the Bloomington-Normal franchise are set forth in TeleCable's "Petition to Deny Application [of General] for Section 214 Certification." That petition is incorporated herein by reference, and a copy is attached for the Commission's convenience.

4. That petition was directed to a 214 application filed by General to provide facilities to GT&E. Relief is now sought directly against GT&E because TeleCable has just received information that GT&E, in direct contradiction of representations by its affiliate to the Commission, is about to construct its own facilities.

5. TeleCable would have requested relief from the Commission at an earlier time had TeleCable known of GT&E's plans. But as late as March 7, 1969, in response to a Commission letter to GT&E Service Corporation regarding the 214 certificate, General was saying: "General knows of no economical or technical means of providing these services other than the type of facilities proposed"¹ This statement referred to the facilities General proposed to provide to GT&E and for which 214 certification was requested. This is a clear representation that General (and necessarily GT&E, its affiliate) was exclusively considering using facilities to be provided by General. Since GT&E's newly announced construction plans for the first time evidence an alternative means of providing such services, this request for relief is timely.

6. Immediate relief is needed and appropriate to preserve the status quo pending Commission consideration of TeleCable's petition to deny General's request for Section 214 certification (*General Telephone Co. of California*, 13 FCC 2d 448 (1969)). As indicated by the Commission's show cause order in the *AuSable Telephone* case (FCC 69-100, released February 12, 1969), a cable television company

¹ See attached letter from General to Frank Palik.

is subject to Section 214 requirements where it is affiliated with the local telephone company. Therefore, construction not only by General but also by GT&E is subject to Section 214 and TeleCable's petition to deny.

7. Immediate relief is needed because if GT&E is allowed to commence construction by March 19, the very fact of its construction will be argued by GT&E as the reason for denying the relief sought by petitioner, herein. TeleCable asks for this temporary relief to prevent such irreparable harm while it prepares a request for permanent relief to supplement the petition to deny. The substance of that request, which will be filed within four days, may be outlined as follows:

(a) In its *General Telephone Co. of California* decision, the Commission recognized the dangers of telephone companies entering the CATV field, especially where local telephone companies and CATV operators would be affiliated.

(b) This danger arises from the economic leverage of the telephone company, a leverage that can be exploited by an affiliate of the telephone company as well as by the company itself.

(c) Unless the Commission's CATV-related 214 policy is applied directly to telephone company affiliated CATV operators, the telephone companies will have a loophole for avoiding that policy while engaging in the anti-competitive practices at which that policy is directed. This danger is aptly demonstrated by the instant case, in which GT&E obtained its franchise through the use of the precise anticompetitive practices of which the Commission expressed fear in the *General Telephone Co. of California* opinion.

(d) The Commission must protect the integrity of its CATV-Section 214 policy. It has adequate authority to do so.

(e) That authority can be asserted directly under Section 214. The Commission has apparently already recognized this in its *AuSable Valley Telephone* order (FCC 69-100), which subjects a cable television company affiliated with a local telephone company to the provisions of Section 214.

(f) Regardless of the direct application of Section 214 to such CATV companies, the Supreme Court in the *Southwestern Cable* case (392 U.S. 157 (1968)) upheld the power of the Commission to regulate CATV directly in order to fulfill its statutory obligation of developing and enforcing an overall communications policy in the public interest. A prohibitory order, permanent in nature, to protect the integrity of its 214 policy would clearly be an order necessary to the performance of the Commission's functions and valid under Section 4(i) of the Communications Act as applied in the *Southwestern Cable* case.

8. The above argument contains a likelihood of success sufficient to warrant temporary relief. The *Southwestern Cable* case supports the power of the Commission to issue, directly against a CATV operator, a temporary prohibitive order designed to protect the status quo.

9. The only harm to GT&E from such an order will be the result of GT&E's representations to the governing bodies of Normal and Bloomington that the Commission's "214" decision would not affect their performance (see Exhibit C to attached "Petition to Deny Application for Section 214 Certification"). Since the "214" decisions and quite obviously the policy behind those decisions do in fact apply to GT&E, that company cannot complain of such harm.

WHEREFORE, TeleCable requests that the Commission immediately issue a temporary order prohibiting GT&E from commencing construction, or if already commenced from continuing construction, of any CATV facilities in Normal and Bloomington, Illinois, until such time as the Commission can consider and rule upon TeleCable's "Peti-

tion to Deny Application for Section 214 Certification'' and the additional request for permanent relief to be filed within the next four days.

Respectfully submitted,

TELECABLE CORPORATION

By /s/ JAY E. RICKS
Jay E. Ricks

By /s/ MARVIN J. DIAMOND
Marvin J. Diamond

Hogan & Hartson
815 Connecticut Ave., N. W.
Washington, D. C. 20006
Its Attorneys

March 14, 1969

AFFIDAVIT

WASHINGTON, D. C.

March 14, 1969

DISTRICT OF COLUMBIA: ss

I, Rex A. Bradley, being first duly sworn do hereby depose and state that I am President of TeleCable Corporation, an applicant for CATV franchises in Bloomington and Normal, Illinois, and that the facts in the "Petition for Temporary and Immediate Ex Parte Relief" are true to the best of my personal knowledge and belief.

/s/ REX A. BRADLEY
Rex A. Bradley
President

Sworn to and subscribed before me this
14th day of March, 1969.

/s/ ELEANOR SISOANNETTI

My Commission expires: June 30, 1970.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554

File No.

In the matter of

GT&E COMMUNICATIONS, INC., AND
GENERAL TELEPHONE COMPANY OF ILLINOIS,
Bloomington and Normal, Illinois

To: The Commission

Petition for Permanent Special Relief*

TeleCable Corporation hereby petitions the Commission to issue, pursuant to Section 74.1109 of the Rules and Section 4(i) of the Communications Act of 1934, as amended, an order permanently prohibiting GT&E Communications, Inc. and General Telephone Company of Illinois from constructing and operating their own CATV facilities in Bloomington and Normal, Illinois. In support whereof, the following is shown:

1. TeleCable Corporation (hereinafter "TeleCable") is engaged in the operation of CATV systems in various communities in the United States. TeleCable, along with Bloomington-Normal Perfect Picture Company (hereinafter "Perfect Picture") and GT&E Communications, Inc. (hereinafter "GT&E"), competed for a CATV franchise in Bloomington and Normal, Illinois. A franchise was awarded in September, 1968, to GT&E.

2. Subsequent to the award of the franchise, General Telephone Company of Illinois (hereinafter "General")¹ submitted an application (File No. P-C-7213) for a certifi-

* Facts related in this pleading are supported by affidavits filed with pleadings incorporated herein by reference or are such that the Commission may take official notice of them.

¹ GT&E and General are under the common control of General Telephone & Electronics Corporation.

cate pursuant to Section 214 of the Communications Act for authority to construct CATV facilities to be leased to GT&E. On October 21, 1968, TeleCable filed a petition to deny that application. That petition and the affidavits attached thereto which clearly establish TeleCable as a party in interest are incorporated herein by reference.

3. On March 14, 1969, TeleCable filed a "Petition for Temporary and Immediate Ex Parte Relief" to prevent GT&E from constructing a CATV system in violation of express Commission policy. That pleading also is incorporated herein by reference.

Preliminary Statement

4. The Commission expressed the concern in *General Telephone Co. of California*, 13 FCC 2d 448 (1969), that the existence of an affiliation between the CATV operator and the telephone company serving the same community creates a dangerous potential for anti-competitive practices. The instant case demonstrates beyond any question that such a danger is not theoretical; it is real. By virtue of their affiliation with each other General and GT&E have eliminated competition for interstate wire communications (CATV) in Bloomington and Normal, Illinois. They now are attempting to circumvent the Commission's responsibility to protect the public interest by a stratagem of such obvious duplicity that the Commission virtually is dared to stop it.

Statements of Facts

5. The cities of Bloomington and Normal, Illinois are located approximately midway between Peoria and Champaign, Illinois. Because Normal and Bloomington are within the Grade B contours of four television stations, they were not among the early cities to receive CATV applications. However, when it became apparent in the mid 1960's that television viewers were willing to subscribe to a service that not only provided additional programming

selections but also improved the reception of available signals, cities such as Bloomington and Normal became prime markets for CATV.

6. The typical CATV applicant, realizing that CATV utilizes telephone poles for the placement of its cables, customarily approaches the local telephone company in his community to determine the terms upon which pole space would be leased. Thus, when Perfect Picture was formed in 1965 to secure the local CATV franchises, the first order of business was to contact a representative of General concerning a pole attachment agreement. While General initially was willing to discuss the terms of such an agreement (and acknowledged it had executed a number of such agreements in other communities), its attitude changed completely in 1966. Not only was the offer to negotiate a pole attachment agreement withdrawn, but Perfect Picture was told by the President of General that if Perfect Picture refused to enter into a lease-back agreement with General for the entire CATV plant, General would "invite" its CATV affiliate, GT&E to obtain the CATV franchises in Bloomington and Normal. (See Exhibits A, B, C)

7. General further stated that it would grant no pole attachment agreements with respect to its poles because such uses by non-utilities created "potential interference or damage." (Exhibit C) Since General owned approximately 40 percent of the utility poles in Bloomington and Normal, and shared the remaining poles with Illinois Power Company under joint use agreements,² Perfect Picture reached the conclusion that it had "no other real choice than to go with General Telephone." (See Exhibit A) At the same time, Perfect Picture felt that the General tariff for a lease-back system was "unreasonably high." (See Exhibit C)

² Petitioner has not seen the joint use agreements between General and Illinois Power relating to poles in Bloomington and Normal, however, on the basis of information and belief, it understands that they give each party some rights to object to the use of a pole by a third person, and, also they look toward an eventual 50-50 ownership of poles in the subject communities.

8. The CATV situation in Bloomington and Normal remained somewhat dormant until TeleCable, the petitioner herein, evidenced its interest in a CATV franchise. Consistent with the threat of its affiliated company, GT&E entered the franchise contest along with TeleCable and Perfect Picture.

9. Although it is difficult in such matters to point to any particular dispositive statement, the clear impression was created by General and GT&E in the franchise proceedings that if the communities of Bloomington and Normal were interested in having CATV within the foreseeable future, they had better deal with the telephone company's subsidiary. For example, at the joint hearings before the Bloomington and Normal city councils on August 15, 1968, TeleCable truthfully had to acknowledge that its commitment to construct a CATV system was conditioned upon its ability to obtain attachment agreements from Illinois Power and General. (See Exhibit D) GT&E argued that it faced no such delay in construction. (See Exhibit D) A representative of General compounded the problem for the unaffiliated applicants by declining to state whether or not his company would ever lease pole space to TeleCable or Perfect Picture. (See Exhibits D, E) Notwithstanding the Commission's June 26, 1968 decision in *General Telephone Co. of California, supra*, GT&E advised the Bloomington and Normal Councils that Section 214 of the Communications Act did not in any way affect its ability to perform under a lease-back arrangement with General.

10. Having effectively used its affiliation with General to obtain a favored competitive position, GT&E naturally received the CATV franchises for Normal and Bloomington.

11. On October 3, 1968, General made application to the Commission for a certificate pursuant to Section 214 of the Act to construct the cable facilities for GT&E. (File No. P-C-7213).

12. TeleCable filed a petition to deny General's application on October 21, 1968. Because representatives of

GT&E had revealed a strategy during the franchise hearings to circumvent the certification requirements of Section 214, TeleCable's petition included a request for a declaration by the Commission that the construction of wide-spectrum distribution facilities "by a company affiliated with General Telephone of Illinois would require certification and, therefore, would violate the provisions of an order denying such authority to General Telephone of Illinois." [Petition to Deny . . . , p. 8] A "Reply to Petition to Deny" was filed by General on November 4, 1968, and, to date, there has been no action by the Commission concerning the contested certificate.

13. There have been pertinent developments, however, concerning the General application for a Section 214 certificate. Since GT&E represented to the councils of Bloomington and Normal that it would proceed expeditiously with the construction of the CATV system (a representation that the unaffiliated CATV applicants were unable to make), the Town of Normal included a provision in its ordinance that the "Grantee [GT&E] shall not be afforded any extension of time under Section 7 of Ordinance No. 715 by reason of a delay occasioned by regulations arising out of the applicability of Section 214 of the Federal Communications Act to Grantee herein." GT&E thus was put to the test to avoid the Commission's holding in the *General Telephone Co. of California, supra*.

14. By its letter to the Commission of November 13, 1968, General confirmed that it "has no intention of granting pole line attachments to any CATV operator in the Bloomington-Normal area, without regard to the existence of corporate affiliation." (See Exhibit F)

15. On March 7, 1969 General responded to a Commission inquiry concerning the Section 214 application as follows:

There are no other available facilities in the area capable of providing the service proposed and of filling the demand for wide spectrum services. General knows of no economical or technical means of provid-

ing these services other than the type of facilities proposed, and in our opinion the proposed construction is in the public interest, convenience and necessity.³

16. *Four days before* the above-quoted statement was addressed to the Commission, General's affiliate, GT&E, informed the governing bodies of Bloomington and Normal that "GT&E Communications, Inc. has made the decision to construct the cable system in Bloomington-Normal without the aid or use of the facilities of the General Telephone Company of Illinois." (See Exhibit G)

17. GT&E's letter further revealed that:

An agreement has been consummated with the Illinois Power Company to lease space on the poles in the area. It is planned to construct approximately 60% of the cable facilities on Illinois Power Company poles with the remaining 40% of facilities to be placed underground. (See Exhibit G)

18. In summary, the facts show the following:

(1) Prior to 1966, General was willing to execute pole attachment agreements with non-affiliated CATV companies.

(2) General reversed that policy in early 1966 without notice and advised CATV companies that henceforth only lease-back agreements would be offered.

(3) To force an independent CATV company to accept a lease-back agreement, General threatened to invite its CATV affiliate, GT&E to enter the franchise contest.

(4) When the independent CATV company refused to accept the lease-back arrangement, GT&E did enter the franchise contest.

(5) GT&E won the CATV franchise contest because it was the only applicant that faced no problems in dealing

³ A similar statement is contained in General's Section 214 application.

with a local telephone company or in paying its lease-back tariff rates.

(6) At the same time that General was representing to the Commission that a lease-back system was the only economical or technical means for providing the CATV facilities, GT&E announced the commencement of construction of identical facilities on poles owned by Illinois Power Company but jointly used by General.

(7) General shares the Illinois Power Company poles pursuant to written agreements, but General has not objected to GT&E's use of such poles.

19. There are listed below a series of questions based on the alleged facts of the matter that establish quite clearly the relevance of the activities of General and GT&E to the Commission's overall responsibility under the Communications Act:

(1) If General's policy of renting pole space for CATV cables was reversed because of a *bona fide* concern to prevent the potential interference or damage to telephone facilities from third party use, why would GT&E, a company affiliated with General, now seek to rent Illinois Power poles that are jointly used by General?

(2) If General truthfully believes that CATV's use of power and telephone poles is contrary to the public interest in that it may jeopardize telephone service, why has it not urged Illinois Power not to lease jointly used poles to GT&E?

(3) If GT&E's use of Illinois Power poles will not, in fact, harm or threaten telephone lines on the same poles, why does not GT&E also seek to rent General poles and why does not General agree to rent such poles?

(4) Why does GT&E propose to build a partially underground CATV plant when electric power cables in Bloomington and Normal are above ground?

(5) Since General will have to replace worn out poles in Bloomington and Normal to achieve 50-50 ownership of all

such poles with Illinois Power, what will happen to the CATV cable when a Illinois Power pole is replaced by a General pole? Will the CATV plant dip in and out of the ground or will General compromise its position on the rental of pole space to CATV?

(6) Is GT&E building 40 percent of its CATV plant underground merely to circumvent FCC policy and, if so, what effect will the prohibitively more expensive underground construction have on subscriber rates and possibly telephone rates?

(7) Why did General represent to the Commission that it knows of no economical or technical means of providing a CATV system except on a lease back basis when at the same time its affiliated company was announcing the start of construction of a "pole rental" system?

(8) What is the practical difference, if any, between a CATV system built by Jerrold Corp. for General to lease to its affiliate in Bloomington-Normal, and a CATV system built by Jerrold Corp., for General's affiliate in Bloomington-Normal?

20. The facts of this case demonstrate the threat to the vigorous development of CATV posed by the telephone companies' monopoly leverage. The Commission, in order to fulfill its responsibilities in protecting the public interest in interstate wire communications, should immediately assert its authority under Section 218 of the Communications Act. A thorough investigation should be made of the extent to which the management of General is seeking to avoid current and future competition from non-affiliated CATV operators.

21. As the Commission has recognized, CATV potentially may provide a variety of new communications services to the home. The public has a profound interest in assuring a fair competitive basis for entry to the CATV market which can produce the earliest application of technological innovations at the lowest cost to the consumer. But such

fair competition will not exist where CATV is directly or indirectly controlled by the local telephone company.

22. By regulating the entry of telephone company affiliates into the CATV industry, the Commission will thereby remove the means by which a telephone company can eliminate competition for CATV. A further benefit from such regulation of entry will be that the telephone company, having no way to reap a monopoly profit through its subsidiary, will be subjected to market-place forces which will encourage reasonable pole attachment policies and more competitive lease-back tariffs.

23. The instant case clearly demonstrates that if the Commission allows a telephone company to enter CATV through a subsidiary or affiliate, the company has the same incentive to use anticompetitive tactics as if it were building a lease-back system. It is to protect the public from the waste and harm of such anticompetitive practices that the Commission has seen fit to act under Section 214 with regard to lease-backs. But to protect the public interest completely, the potential loop-hole through which General and GT&E are trying to squeeze must be closed. The Commission has ample authority to do just that.

24. There is first the question of the direct applicability of Section 214 to the activities of GT&E. The Commission is here faced with a novel question: must a subsidiary or affiliate of a local carrier, before commencing construction or operation of CATV facilities not as a "common carrier undertaking" (for use by someone else) but rather for its own use, apply for Section 214 certification? This question should be answered in the affirmative.

25. While not confronted with this precise issue, the show cause order in *Dimension Cable TV, Inc.* (16 FCC2d 455 (1969)) is precedent for this position. There, by including not only the telephone company but also its CATV affiliate as parties to the hearing, the Commission subjected both to the applicability of Section 214. The Commission recog-

nized that, especially where the telephone company is affiliated with the CATV franchisee, Section 214 may apply to more than CATV channel service offerings by telephone companies.

26. Section 214(a) reads in relevant parts as follows:

No *carrier* shall undertake the construction of a new *line* . . . unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line. . . . As used in this section the term "line" means *any channel of communication*. . . . (emphasis added)

27. The language of Section 214 does not restrict its applicability to facilities used on a common carrier basis. Rather, it applies to construction of a "line", defined therein as "any channel of communication," by a "carrier."

28. A CATV system is an interstate "channel of communication." (*General Telephone Co. of Calif., supra*) And General is clearly a carrier, because it operates a telephone system. Therefore, the construction of a CATV system—an interstate channel of communication, a "line"—by General—a "carrier"—would be subject to the certification requirement of Section 214 regardless of whether General intended to lease the system as a common carrier offering or to operate the system itself.

29. A carrier should clearly not be allowed to avoid statutory provisions through the obvious subterfuge of acting through corporate relatives.⁴ Therefore, to protect the integrity of Section 214, the term "carrier" should apply to subsidiaries of, those who control, those who are under common control with, a "carrier," or at least those affiliated with a carrier operating in the same community. Thus, GT&E, like General, should be subject to Section 214.

⁴ Section 2(b)(2) of the Act is strong indication that Congress did not intend to allow subject carriers to avoid the requirements of the Act by acting through subsidiaries or affiliates.

30. But the Commission is not limited to the direct applicability of Section 214 to GT&E in its ability to reach this conduct. The statutory base upon which the Commission relied in asserting its jurisdiction over CATV also provides the Commission with authority to act in the instant matter. The legal basis for the Commission's jurisdiction over CATV need not be reargued here. It is set forth in Appendix C to the Second Report and Order (2 FCC2d 725, 793 (1966)). And it has been upheld by the Supreme Court in *United States v. Southwestern Cable Co.*, (392 U.S. 157 (1968)).

31. As an alternative to holding GT&E directly subject to the certification requirements of Section 214, we therefore ask the Commission to assert its jurisdiction under Section 4(i) of the Act and Section 74.1109 of the Rules. We ask the Commission to rule, with or without a hearing,⁵ that on the basis of the facts presented construction and operation of a CATV system in Bloomington and Normal, Illinois by General or any subsidiary or affiliate of General, would be contrary to the public interest, convenience and necessity. The Commission should thus issue an order, pursuant to its authority under Section 4(i), permanently prohibiting General, GT&E, and any other subsidiary or affiliate from constructing and operating such a system.

32. The Commission has a further alternative to using the procedures of Section 74.1109. One of the Commission's functions is to render decisions issuing or denying in the public interest Section 214 certificates. Protection of the integrity of such decisions is clearly necessary to the execution of a valid Commission function. The Commission can therefore issue an order against someone under its jurisdiction to protect the integrity of a Section 214 decision. And GT&E, as builder and operator of a CATV system, and as an affiliate of General engaged in wire com-

⁵ Section 74.1109(f) of the Rules provides for the holding of an evidentiary hearing on petitions seeking special relief in CATV matters when deemed appropriate by the Commission.

munications, is subject to the Commission's jurisdiction. (*United States v. Southwestern Cable Co.*, *supra*.)

33. We have already demonstrated how the planned construction by GT&E will subvert the Commission's CATV/Section 214 policy as first announced in *General Telephone Co. of California*, *supra*. General, through an affiliate, is attempting to avoid that policy while engaging in, and benefiting from, the precise anticompetitive practices at which that policy is directed, those practices of which the Commission expressed fear in its *General Telephone Co. of California* opinion.

34. Therefore, should it deny General's application for Section 214 certification, the Commission can and must protect the integrity of such a decision by issuing an order prohibiting GT&E as well as General from constructing and/or operating a CATV system in Bloomington and Normal.

35. We ask for one other ruling pursuant to Section 74.1109 of the Rules. GT&E served Section 74.1105(a) notice of its plans to commence operation of this system on September 25 and 26, 1968. TeleCable received no actual notice, and recognizes that the rules do not require TeleCable to have been served. Although TeleCable is a party in interest, it did not file an opposition to commencement of service pursuant to Section 74.1109.

36. However, in its "Petition to Deny Application for Section 214 Certification", filed on October 21, 1968, TeleCable raised the same public interest arguments it would have raised under Section 74.1109 in opposing operation of a CATV system by General and/or GT&E. That Petition was filed within 30 days of GT&E's "1105" notice. It raised objections not only to General's certification but to operation of the system by GT&E as well [see "Petition to Deny . . .," p. 8]. Therefore, we ask the Commission to rule that the Petition was an adequate "1109" objection and that it serves to invoke the automatic stay provisions

of Section 74.1105(c) against commencement of service by GT&E.

CONCLUSION

37. This case demonstrates that telephone companies not only have monopoly leverage to enter CATV but also the desire to use that leverage. The Commission has already recognized that entry of telephone companies into CATV may be adverse to the public interest, and has begun to protect the public interest through the application of Section 214.

38. The facts presented herein show that the public's interest in CATV can be protected from the evils of telephone company monopoly power only by expansion of the "214 policy" to include affiliates and subsidiaries of telephone companies operating in the same community. By making affiliates as subject to Section 214 as are the carriers, the Commission will eliminate the incentive of telephone companies to deny pole attachment agreements or to use other anticompetitive tactics designed at getting CATV franchises for its affiliates. This in turn will encourage the most economical and competitive use of existing facilities and thereby effect the purposes behind Section 214 without extending the telephone company's monopoly.

39. Whether by direct application of Section 214, by collateral order to protect the integrity of Section 214 decisions, or by order under its authority to regulate CATV, the Commission must prohibit General & GT&E from construction and operation of a CATV system in Bloomington and Normal, Illinois.

WHEREFORE, TeleCable requests

(a) that the Commission rule that GT&E is equally subject with General to the requirements of Section 214, and order GT&E to show cause why it should not be ordered to cease and desist from construction of CATV facilities in Bloomington and Normal, Illinois; or

(b) that if General is denied a Section 214 certificate for construction and operation of CATV facilities in Bloomington and Normal, the Commission by order prohibit GT&E from such construction and operation; or

(c) that the Commission rule pursuant to the ad hoc procedures of Section 74.1109 of the Rules that operation of a CATV system in Bloomington and Normal by General or GT&E is contrary to the public interest and prohibit such operation by order pursuant to Section 4(i) of the Act.

TeleCable further requests

(d) that the Commission, pursuant to its authority under Section 218 of the Act, investigate the management policies of General and its affiliates, parent and subsidiaries to determine how it is seeking to avoid competition from non-affiliated CATV companies;

(e) that the Commission rule that TeleCable's "Petition to Deny Application for Section 214 Certification" was sufficient to invoke the provisions of Section 74.1105(c) of the Rules automatically staying GT&E's commencement of CATV service until the Commission rules on the petition or otherwise lifts the stay.

Respectfully submitted,

TELECABLE CORPORATION

By /s/ JAY E. RICKS
Jay E. Ricks

By /s/ MARVIN J. DIAMOND
Marvin J. Diamond

Hogan & Hartson
815 Connecticut Avenue, N.W.
Washington, D. C. 20006
Its Attorneys

March 26, 1969

Exhibit A

(The original affidavits enclosed herein as Exhibits A through E are on file with TeleCable's "Petition to Deny Application for Section 214 Certification" [File No. P-C-7213]).

AFFIDAVIT

Date: September 25, 1968

Bloomington, Illinois

I, Timothy R. Ives, being first duly sworn, do hereby depose and state that I am President of Bloomington-Normal Perfect Picture Company and that the following facts are true to the best of my personal knowledge and belief, and that in my efforts to secure the CATV franchise for my company, I had many dealings with representatives of General Telephone Company of Illinois from 1965 through August 1968, concerning pole attachment agreements.

(1) I made a contact with Mr. Richard Reed, District Commercial Manager of General Telephone Company of Illinois, at his office on East Market Street approximately the 1st of February 1965. He indicated that I was the first contact he had had about CATV and he felt that a mutually attractive arrangement could be worked out since they had agreements in other communities for pole attachment agreements.

(2) A letter to me dated March 24, 1965, from Mr. Reed, the District Commercial Manager of General Telephone Company of Illinois, says in part, "Our first preference is to provide all distribution facilities on a monthly rental basis. If this is not desirable, we are also willing to provide space on our poles for your distribution system. This procedure would require a pole rental agreement contract."

(3) On February 9, 1966, Mr. Loring C. Merwin, a director of Perfect Picture, wrote Mr. Walter Wright, President of General Telephone of Illinois, that it was "... definitely our intent to continue discussion leading to a con-

tract." to lease a CATV distribution system. This letter was sent after Mr. Merwin and Mr. Wright had met in Mr. Merwin's office on February 9, 1966, and Mr. Wright had told Mr. Merwin, according to a memorandum written by Mr. Merwin in my file dated February 9, 1966, "If we (Perfect Picture) don't want to enter into a lease agreement they (Gen Tel) will probably call in their CATV subsidiary and give them a lease." Also the following is quoted from the memorandum of Mr. Merwin to me dated February 9, 1966: "Walter (Mr. Walter Wright, President of General Telephone Company of Illinois) strongly inferred that if our group decides against signing a Gen Tel contract, he will invite their CATV operating subsidiary to come in and will offer them a contract. Since Gen Tel will make no pole agreements and since neither council is likely to grant another franchise involving the erection of new poles (even though franchisee could make a deal with Illinois Power for 80% of the poles) it appeared to me that if we want to get into the CATV business we have no other real choice than to go with Gen Tel."

(4) On December 5, 1967, I had lunch with Mr. William C. Rowland, President of General Telephone Company of Illinois, Dick Ross, a Vice President of General Telephone Company of Illinois, and Bob Griswold, Marketing Director for General Telephone. Griswold had suggested the meeting. When I asked Mr. Rowland about pole attachment agreements he said that he had granted a pole agreement in LaFayette, Indiana, and he hoped it was the last pole agreement he would ever enter into. That the attitude of Gen Tel, as far as he was concerned, as President, was to try to make it attractive on the lease-back arrangement and not enter into pole agreements.

(5) On May 10, 1968, Loring C. Merwin, a director of Perfect Picture, Merrick Hayes, our attorney, and I visited with Mr. Rowland, President of General Telephone Company of Illinois, in his office. We discussed and questioned Mr. Rowland about pole attachment agreements. He indicated that he did not wish to enter into pole agreements

and, therefore, he had no rates and there were none now for attachments. Those that were in effect from past agreements would be continued to the end of the agreement, but he hoped that they would not have to be renewed. We pointed out that General Telephone in Bloomington-Normal owned approximately 25% of the poles and that the cities most likely would not like an increase by even 25% the number of poles in the city. Mr. Rowland acknowledged this and pointed out that this was also a good reason that his subsidiary should receive the franchise since they would be operating under a lease and, therefore, there would be no need to place poles. Mr. Rowland indicated that if we would sign the lease agreement with Gen Tel he felt that he could get his subsidiary to pull out and he reviewed what he considered to be the major attraction to a lease agreement.

(6) On the night of August 15, 1968, I attended a joint meeting of the city councils of Bloomington and Normal, which was held to review the bids for the CATV franchise. General Telephone Company of Illinois was represented at this meeting by Mr. James Malone, Central Division Manager. Mr. Malone was asked if General Telephone would enter into pole attachment agreements. His reply was that no one had asked them for such agreements. He was asked if General Telephone had a policy of granting pole attachment agreements to which Mr. Malone replied that they would grant pole attachment agreements to other utilities. When Mr. Malone was pressed on this point as to whether General Telephone would grant pole attachment agreements to a CATV company other than their own, he said he had no answer either "pro or con".

/s/ TIMOTHY R. IVES
(Timothy R. Ives)

Sworn to and subscribed before me this 25th day of September, 1968.

/s/ DOROTHY COLEMAN

My Commission expires: Aug. 3, 1969.

Exhibit B

AFFIDAVIT

DATE: September 27, 1968

BLOOMINGTON, ILLINOIS

I, Merrick C. Hayes, being first duly sworn, do hereby depose and state that I am an attorney licensed to practice law in the State of Illinois and am practicing in the City of Bloomington, McLean County, Illinois.

That in May of 1968, I accompanied Mr. Loring Merwin and Mr. Timothy Ives, to the office of Mr. William Rowland, President of General Telephone Company of Illinois, in Bloomington, Illinois. Mr. Ives had previously contacted representatives of the telephone company as President of Bloomington-Normal Perfect Picture Co. in an effort to secure a pole attachment agreement with the telephone company for the purpose of the CATV installation in Bloomington-Normal. Mr. Ives' company was in the process of preparing its proposal or bid to the two cities and as there was a requirement of a pole attachment agreement, the meeting which I attended was to secure same. Mr. Rowland in response to our inquiry indicated that they felt that they had to be a part of any CATV installation and that unless we would agree to lease the entire system from the telephone company according to a tariff which they had previously filed they would encourage one of their affiliate companies to apply for a system to secure their participation. Mr. Rowland indicated that for numerous reasons they were not interested in making any pole attachment agreements and that we should consider whether we would agree to lease the entire facility from them or be confronted with the application by their affiliate without the benefit of any pole attachment agreements with the second alternative. We left the meeting with no other alternatives offered to us and the pole attachment agreements out of our reach.

The above information is true to the best of my personal knowledge and belief.

/s/ MERRICK C. HAYES
Merrick C. Hayes

Subscribed & sworn to before me this 27th day of September, 1968.

MARY DOUGAN
Notary Public

Exhibit C
AFFIDAVIT

September 26, 1968

Bloomington, Illinois

I, Loring C. Merwin, being first duly sworn, do hereby depose and state that I am a director of Bloomington-Normal Perfect Picture Company and that the following facts are true to the best of my personal knowledge and belief:

On Friday afternoon, May 10, 1968, I attended a meeting at the office of Mr. William C. Rowland, President of General Telephone Company of Illinois. Also present were Timothy R. Ives, President of Perfect Picture and Merrick Hayes, attorney for that corporation.

Our principal purpose in arranging this meeting with Mr. Rowland was to discuss with him the possibility of a pole attachment agreement in the event that Perfect Picture Corporation was the successful applicant for the CATV franchise at Bloomington-Normal, Illinois. Mr. Ives had previously discussed this matter with other members of the GenTel organization but had been unable to get a firm reply. Each time the subject was broached the GenTel people had said that although they did have pole attachment

agreements elsewhere in Illinois it was "becoming company policy" not to make such agreements. On each occasion they urged us to make our bid on the basis of a cable system to be constructed by GenTel and leased by them to us.

In the meeting with Mr. Rowland we said that we would like a definite answer as to whether or not GenTel would make a pole attachment agreement. We said that we had analyzed their proposed tariff for a system to be rented to us and we felt that it was unreasonably high. We said that we had decided to construct our own system and felt that a pole attachment agreement would be essential inasmuch as GenTel presently owns about 40% of the utility poles in Bloomington-Normal and has an agreement with Illinois Power Company whereby the two companies will eventually each own 50% of the poles. We pointed out that we had been assured by Illinois Power Company that they would give us an attachment agreement on the poles owned by them.

We further pointed out that if we were forced to put in our own poles at locations where the present poles are owned by GenTel there would be a very strong adverse public reaction. One of the primary reasons for CATV, aside from better television service, is to enhance the appearance of the city by removing unsightly rooftop antennas and we pointed out that this esthetic gain would be more than negated by the unsightliness of additional poles throughout the two communities. We felt that unless we could use all of the existing utility poles it would make it next to impossible for us to be the successful bidder for the CATV franchise. Also, the ordinance of both Bloomington and Normal required that the successful applicant have pole attachment agreements within 30 days after award of the franchise.

Mr. Rowland said that he sympathized with our point of view but that it was indeed becoming the definite policy of GenTel of Illinois not to make pole attachment agree-

ments. He spoke of the present dual use with Illinois Power, the necessity of proper spacing between installations on the poles, the potential interference or damage from third party use, etc. He ended that part of the conversation by saying (I believe this is an exact quotation) "I hope I never have to sign another pole attachment agreement."

Mr. Rowland then urged us to reconsider allowing Gen-Tel to construct a rental system for us. He strongly indicated that if we would be willing to base our bid to the two cities on such a rental system, he believed he could persuade their affiliate, General Telephone and Electronics Communications, Inc., to drop out as an applicant for the franchise.

/s/ LORING C. MERWIN
Loring C. Merwin

Sworn to and subscribed before me this 27th day of September, 1968.

/s/ CHAS. H. CUMMING
Notary

My Commission expires: June 29, 1972.

Exhibit D

AFFIDAVIT

Date: October 14, 1968

Norfolk, Virginia

I, Rex A. Bradley, being first duly sworn, do hereby depose and state that I am Vice President and General Manager of TeleCable Corporation and the following facts are true to the best of my personal knowledge and belief:

(1) On the night of August 15, 1968, I attended a joint meeting of the city councils of Bloomington and Normal, Illinois, which had been called for the purpose of hearing

representatives of competing companies, who were applicants for a CATV franchise in the two cities.

(2) Representatives of three CATV companies, who were applicants for the franchise, were present. These companies were "Bloomington-Normal Perfect Picture" represented by Mr. Timothy R. Ives, Mr. Loring C. Merwin and Mr. Hayes; "G.T. & E. Communications" represented by an attorney whose name was Davis and several persons whose names are not known to me; "TeleCable Corporation" represented by Rex A. Bradley and Jimmie S. Key. In addition, Mr. Malone, district manager (or possibly division manager) of General Telephone Company of Illinois was present.

(3) In the discussion it was brought out that the City Councils were anxious that cable television service to the community commence at the earliest possible date. From the discussion it appeared that the application of "Perfect Picture," which offered the most acceptable rates was being rejected because it had indicated that it would not commence construction until after favorable consideration on a waiver request to be submitted to the FCC, requesting authority to import distant signals. It further appeared that "TeleCable's" rates, after rejection of "Perfect Picture's" bid, were considered most acceptable, thus giving TeleCable the favored position (since TeleCable had stated that construction would begin with no plan to carry distant signals initially).

(4) The presiding Mayor, City Attorneys, and members of the two Councils questioned representatives of each of the companies making application, asking questions designed to establish which of the applicants could first render cable television to the communities if a franchise were awarded.

(5) In response to a specific question, representatives of G.T. and E. Communications stated that there would be no delay relating to the necessity for obtaining a "certifi-

cate of convenience and necessity" since G.T. and E. Communications would own and operate the system rather than lease it from General Telephone Company of Illinois, and under this arrangement, the certificate would be unnecessary.

(6) Since TeleCable had qualified its bid indicating it could start construction only after it had negotiated a pole attachment agreement with General Telephone Company of Illinois, the Mayor (or the City Attorney) asked Mr. Malone of General Telephone Company for a statement of General Telephone Company policy regarding lease of space on company poles. Malone stated that it was company policy to lease space to "public utilities." The spokesman for the City then asked whether General Telephone of Illinois would lease space to "TeleCable" or "Perfect Picture" if the franchise were granted to either. Malone said "I don't know, we have no policy on that" or words to that effect.

(7) In the course of these discussions the apparent intent and the result was to create the impression with both Councils that G.T. and E. Communications could commence CATV operations before either "Perfect Picture" or "TeleCable" because G.T. and E. Communications could arrange pole rights with General Telephone Company of Illinois, while neither "Perfect Picture" nor "TeleCable" could be assured of pole rights; and that G.T. and E. Communications would not be required to obtain a certificate of convenience and necessity.

/s/ REX A. BRADLEY
(Rex A. Bradley)

Sworn to and subscribed before me this 15th day of October, 1968.

/s/ BETTY S. WILLIAMS

My Commission expires: June 6, 1971

Exhibit E
AFFIDAVIT

Date: October 14, 1968

Norfolk, Virginia

I, Jimmie S. Key, being first duly sworn, do hereby depose and state that I am Assistant to the Vice President and General Manager of TeleCable Corporation and that the following facts are true to the best of my personal knowledge and belief:

(1) G. T. and E. Communications submitted a CATV franchise bid to the towns of Bloomington and Normal, Illinois stating that they would lease a wide band distribution system from the local General Telephone subsidiary.

(2) In a meeting before Council members from both communities G. T. and E. Communications again stated and presented a written brief that this was their intent.

(3) The purpose of this meeting was to determine which of the three CATV applicants should be awarded the franchise. A major issue was to determine which applicant could provide service first, as is evident by three of Normal Town Attorney Robert Fleming's four questions:

*(a) When will you start construction?

(b) Will you seek a new franchise when CATV grows beyond its presently anticipated services?

*(c) (Of Mr. Malone, General Telephone of Illinois) Would General Telephone allow applicants other than G.T. and E. Communications to use its facilities?

*(d) What is the effect of the Section 214 requirement which could affect G.T. and E. Communications?

(4) When other applicants contended that G.T. and E. Communications would need approval from a Section 214 hearing before starting construction, G.T. and E. Com-

munications representatives replied that, counter to their two written proposals and oral statements, they could avoid a hearing by building a distribution system rather than leasing broad band service. By circumventing the hearing, G.T. and E. Communications would not be delayed in beginning construction of its CATV system.

(5) Mr. James Malone, introduced as a representative of General Telephone of Illinois, was called upon to clarify his company's policy toward CATV applicants other than G.T. and E. Communications. (This was occasioned by TeleCable Corporation having conditioned its bid on being able to negotiate pole attachment agreements.) He replied:

(a) General Telephone will give anyone service under their Tariff # 1, Section 34 filed with the ICC.

When asked if General Telephone has any similar policy regarding pole attachment agreements he stated:

(b) General Telephone regularly grants pole attachment rights to other public utilities.

At this point the chairman was ready to proceed but was reminded by a Perfect Picture representative that CATV was not a public utility, and that, therefore, Mr. Malone's answer did not mean that CATV operators would be given pole attachment rights. The chairman replied that Mr. Malone had said other CATV's would be granted attachment rights, upon which Mr. Malone stated:

(c) He had not said CATV's would be allowed on General Telephone's poles.

When again asked by the chairman if General Telephone of Illinois would grant the other two applicants attachment agreements, Mr. Malone replied:

(d) He had no answer.

I hesitate to affirm that the foregoing exchange is in precise quotations. However, I am confident that I have accurately represented the trend and meaning of the questions and replies.

(6) The effect of the statements made by G.T. and E. Communications representatives and Mr. Malone was to give Council the impression that G.T. and E. Communications would not have to await results of a Section 214 hearing, and that only G.T. and E. Communications had a reasonable chance of quickly getting attachment agreements for telephone company owned poles.

(7) On October 3, General Telephone Company of Illinois applied for permission to construct a wide band distribution facility in Bloomington and Normal. This is contrary to the statements and representations made at the public hearing; the statements and representations upon which their franchise award was based.

/s/ JIMMIE S. KEY
(Jimmie S. Key)

Sworn to and subscribed before me this 17th day of October, 1968.

/s/ BETTY S. WILLIAMS

My Commission expires: June 6, 1971

Exhibit F

ROOM NINETEEN HUNDRED | SEVEN THIRTY THIRD AVENUE
NEW YORK 17, NEW YORK

November 13, 1968

Mr. Frank Palik
Chief, Domestic Services
and Facilities Division
Common Carrier Bureau
Federal Communications Commission
Washington, D. C. 20554

Re: Your Reference 9630; File No. P-C-7213; General
Telephone Company of Illinois

Dear Mr. Palik:

This is in response to your letter of October 24, 1968 requesting certain supplemental information in support of the above-referenced application of General Telephone Company of Illinois ("General") for certification under § 214 of the Communications Act of proposed facilities in Bloomington and Normal, Illinois.

General's application is filed under protest in accordance with the Commission's decision in *General Telephone Company of California*, 13 F.C.C. 2d 448 (1968), for General contends that, as a "connecting carrier," it is not subject to § 214 of the Act and, furthermore, that § 214 is not applicable to the proposed facility. General also contends that § 214 was designed to prevent wasteful duplication or unnecessary construction of common carrier facilities and consequently that the policies or practices of the applicant with regard to pole line attachments is not a relevant consideration. Nevertheless, in order to facilitate the processing of the above-referenced application so that needed lawful service may be provided under valid and effective

tariffs, the following responses are submitted to the four specific questions set forth in your letter:

1. General has not been requested to provide any facilities, and indeed does not operate, in Union City. To the extent that the question should be deemed relevant to the Bloomington-Normal area, General's Reply to Petitions to Deny filed herein on November 4, 1968 noted that Mr. Timothy R. Ives had executed an application for channel service from General on February 22, 1966. This application was on behalf of the subscribers to a preincorporation subscription agreement. The service offering involved was under a tariff on file with the Illinois Commerce Commission. The application filed and accepted by General, was not further implemented by Mr. Ives or those on whose behalf the application was submitted.

2. General has received no formal application or request for pole line attachment agreements with prospective CATV operators in the Bloomington-Normal area.

3. Consonant with its obligations as a common carrier, General will provide service under the applicable tariffs to any customer without regard to the existence of corporate affiliation. The terms and conditions applicable to such service would be those set forth in the tariffs. General has no intention of granting pole line attachments to any CATV operator in the Bloomington-Normal area, without regard to the existence of corporate affiliation.

4. As set forth more fully in General's Reply to Petitions to Deny filed herein on November 4, 1968, three prospective CATV operators applied to the Normal Town Council and the Bloomington City Council for franchises. GT&E Communications Inc. was successful. The other two, Telecable Corporation and Bloomington-Normal Perfect Picture Co. were not.

It is respectfully requested that the above-referenced application be promptly processed to grant.

Respectfully submitted,

GENERAL TELEPHONE COMPANY OF ILLINOIS

By /s/ VERNON C. MAULSON
Vernon C. Maulson
1312 East Empire Street
Bloomington, Illinois 61701

By /s/ GEORGE E. SHERTZER
George E. Shertzer

By /s/ DONALD P. MCCORMICK
Donald P. McCormick
730 Third Avenue
New York, New York 10017

Its Attorneys

CC: The Normal Town Council
The Bloomington City Council
Hogan & Hartson
Dow, Lohnes and Albertson
GT&E Communications Inc.

Exhibit G

GTEC CABLE TV
GT&E COMMUNICATIONS INC.
P. O. BOX 655
BLOOMINGTON, ILLINOIS 61701
(309) 828-3364

March 3, 1969

Mr. Charles L. Baugh, Mayor
Town of Normal, Illinois

Members of the Normal Town Council

Mr. Clarence Bigelow, City Administrator
Town of Normal, Illinois

Mr. Robert McGraw, Mayor
City of Bloomington, Illinois

Members of the Bloomington City Council

Mr. S. W. McAllister, Jr., City Manager
City of Bloomington, Illinois

Gentlemen:

This communication is to inform you of the status of construction of the Cable TV system in Bloomington-Normal:

1. Immediately upon receiving the franchise award to provide cable TV service to the residents of Bloomington-Normal, arrangements were made with the General Telephone Company of Illinois to lease distribution cable facilities from that company. On October 3, 1968, General Telephone Company of Illinois made application to the Federal Communications Commission for a certificate to construct cable facilities under Section 214 of the FCC regulations.
2. Due to petitions filed with the FCC by other CATV applicants, General Telephone Company of Illinois has not been granted a certificate under Section 214. In

keeping with commitments to the City of Bloomington and Town of Normal, GT&E Communications Inc. has made the decision to construct the cable system in Bloomington-Normal without the aid or use of the facilities of the General Telephone Company of Illinois.

3. The management of the television broadcast stations that will initially be carried on the Bloomington-Normal cable system were notified of our intentions to construct such a system on September 25 and 26, 1968. Copies of the notifications to the broadcasters were submitted to the FCC as required by the regulations.

4. An agreement has been consummated with the Illinois Power Company to lease space on the poles in the area. It is planned to construct approximately 60% of the cable facilities on Illinois Power Company poles with the remaining 40% of the facilities to be placed underground.

5. A contract was awarded by GT&E Communications Inc. to the Jerrold Corporation on February 25, 1969 to construct the cable system and furnish the electronics equipment for the Bloomington-Normal system.

6. A lease has been negotiated for a tower and electronics building site in Dale Township. This is on property owned by Mr. John English. Erection of the tower and facilities will commence within 14 days following approval of both Councils to construct at this location.

7. The proposed construction methods have been reviewed with both Bloomington and Normal city engineers and the director of the Normal street development. Guidance has been received from these groups regarding construction requirements.

GT&E Communications Inc. proposes to commence construction on or before March 19, 1969, and will commence

operations as defined and stipulated in the franchise ordinance. Further progress reports will be submitted as construction work progresses.

Very truly,

/s/ TOM M. MAYERS
Tom M. Mayers

TMM/jah

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

File No.

In the Matter of

THE PETITION OF TELECABLE CORPORATION FOR
PERMANENT SPECIAL RELIEF

Opposition to Petition for Permanent Special Relief

GT&E Communications Inc. ("GTEC") hereby opposes the "Petition for Permanent Special Relief" filed on March 26, 1969 by TeleCable Corporation ("TeC"). In support of this opposition, the following is shown:

1. GTEC was the successful applicant for CATV franchises in two contiguous Illinois communities—the City of Bloomington¹ and the Town of Normal.²

2. TeC is one of two unsuccessful, and disgruntled, applicants for the same franchises.³

3. The reasons for the acceptance of GTEC's bid and the rejection of the TeC and BNPP bids by the two com-

¹ CATV Ordinance No. 1968-69 enacted September 23, 1968.

² CATV Ordinance No. 754 enacted September 16, 1968.

³ The other unsuccessful, and disgruntled, applicant—a competitor of TeC—was Bloomington-Normal Perfect Picture Co. ("BNPP"), the affidavits of whose principals are attached to the TeC petition as Exhibits A, B and C.

munity franchising authorities—the Normal Town Council and the Bloomington City Council—are succinctly set forth in the documents attached hereto as Attachment A.⁴ These documents show that the BNPP bid did not meet the requirements of the franchising ordinances in that:

(a) BNPP did not agree to proceed with the installation of a CATV system nor offer to put up the required performance bond until assurance was received from the FCC that distant stations could be received;

(b) BNPP did not intend to request waivers from the FCC within the 30 days established by the ordinances;

(c) BNPP had not arranged an adequate financing commitment; and

(d) BNPP did not propose the carriage of the signal of WCHU, Channel 33, Champaign, Illinois, despite the requirements of the ordinances.⁵

4. The same documents disclose that the TeC bid was defective in that:

(a) TeC had not submitted a complete initial layout for both towns;

(b) TeC's rate schedule was slightly less favorable than GTEC's; and, as set forth in full therein:

(c) "The application from the Telecable Corporation fails to meet the requirements of the subject ordi-

⁴ These documents were previously filed with the Commission as Exhibit C to TeC's Petition to Deny filed on or about October 21, 1968 in File No. P-C-7213 and thus are incorporated by reference in the TeC Petition for Permanent Special Relief.

⁵ Despite these deficiencies, BNPP filed a Petition to Deny on or about October 22, 1968 in File No. P-C-7213, predicated on the same three affidavits which are now attached to the TeC Petition for Permanent Special Relief as Exhibits A, B and C. It must be noted that the BNPP bid was not conditioned on its ability to negotiate pole attachment agreements.

nances in one substantial matter. The cover letter attached to the Telecable application places a condition on its bid making same subject to negotiation of pole attachment agreements with the local telephone and electric utilities at reasonable rental rates. Section 4(i) of the subject ordinances clearly places the responsibility for this matter on the Franchisee and it does not seem advisable for the municipalities to become a party in this matter. If the franchise is awarded to the Telecable Corporation and excessive delays are experienced in securing pole permits caused by circumstances beyond the control of the Franchisee, Section 7(d) of subject ordinances provides for extension of certain time limits at the discretion of the respective Councils.

"This appears to be adequate relief for the pole attachment situation. Therefore, said application should be rejected."⁶

5. There are other reasons why TeC's bid was defective. These are shown in the affidavit and transcript which are attached hereto as Attachment C. These documents were filed with the Commission in File No. P-C-7213 on or about January 6, 1969 and accordingly are incorporated herein by reference.⁷

⁶ Oddly enough, even though the TeC bid was so conditioned, TeC made no formal application or other inquiry regarding the availability of pole attachment arrangements. It failed to do so until, at the earliest, some two weeks following the recommendation that the franchise application be rejected. See affidavit of Rex A. Bradley, dated November 18, 1968, a copy of which is attached hereto as Attachment B, which was filed with this Commission by counsel for TeC on or about November 25, 1968 in File No. P-C-7213 and which accordingly is incorporated herein by reference.

⁷ TeC, of course, is not qualified to do business in the State of Illinois nor has it any subsidiaries or affiliates so qualified. Examination of its bid indicates that TeC only proposed to establish an Illinois corporation as a wholly-owned subsidiary if awarded a franchise.

6. Each of the franchises granted to GTEC specify that 30% of the initial service area must be in service within 360 days of the award of the franchise. Moreover, each of the franchises provides that no extension of time for performance will be afforded by reason of a delay occasioned by regulations or requirements arising out of the applicability of § 214 of the Communications Act of 1934, as amended. GTEC accepted these franchises and posted performance bonds in the amount of \$200,000 each with Bloomington and Normal.

7. GTEC's affiliate, General Telephone Company of Illinois, sought to provide wide spectrum service to GTEC in order that GTEC could meet its franchise commitments. General of Illinois accordingly filed an application under § 214 of the Act with this Commission on October 3, 1968 (File No. P-C-7213). Public Notice of the filing of said application was released by this Commission on October 15, 1968 noting that emergency action was requested due to possible loss of GTEC's franchise caused by delay in serving its proposed patrons.

8. Petitions to Deny said 214 application were filed by TeC and BNPP on October 21 and October 22, 1968, respectively.

9. The Reply of General Telephone Company of Illinois to said Petitions to Deny was filed with this Commission on or about November 4, 1968. A copy of this reply is attached hereto as Attachment D.

10. With the passage of time it became more and more evident that delay in processing the General Telephone Company of Illinois application would make it impossible for GTEC to meet its commitments to the Town of Normal and the City of Bloomington. GTEC accordingly made the decision to construct its own cable system in Bloomington-Normal without the aid or use of the services or facilities of General Telephone Company of Illinois.

11. The application of General Telephone Company of Illinois for authority under § 214 of the Communications Act to construct facilities with which to provide service to GTEC has been or is now being withdrawn.

12. The TeC Petition for Permanent Special Relief thus presents to the Commission a tortured construction of the Act and the Commission's Rules in an effort to utilize Commission's processes to frustrate GTEC (as well as the duly elected franchising authorities of Bloomington and Normal) from providing CATV service to the citizens of those communities. No showing is made by TeC or its former competitor BNPP that frustration of the efforts by GTEC to provide service in the affected communities would result in any faster, any cheaper or any better service being provided therein. Indeed, the TeC Petition for Permanent Special Relief presents to this Commission the clear question as to whether it really meant what it said in its Memorandum Opinion Order and Certificate released April 4, 1969 in File No. P-C-7108 (FCC 69-334) that this Commission intends "to rely largely on state and local authorities to regulate such matters as rates and service areas of CATV systems, the award of CATV franchises, and similar matters" and that this Commission views its role "as one of cooperating with local franchising authorities to the maximum extent possible in such areas." A grant of the relief requested by TeC could only have the effect of by-passing or overruling the local franchising authorities having jurisdiction in the matter which, as this Commission stated on April 4, 1969 (FCC 69-334) "could defeat the objectives of municipal regulation" which, in turn, "could deprive the municipal authorities of the opportunity to determine the nature and extent of services which they believe to be in the best interest of the community."⁸

⁸ In any event, the operation proposed by GTEC is in full compliance with the Commission's Rules and the Commission is without power to grant the relief requested by TeC.

WHEREFORE, it is respectfully requested that the TeC Petition for Permanent Special Relief be summarily denied.

Respectfully submitted,

GT&E COMMUNICATIONS INC.

By /s/ GEORGE E. SHERTZER
George E. Shertzer

By /s/ DONALD P. MCCORMICK
Donald P. McCormick
730 Third Avenue
New York, New York 10017

Its Attorneys

April 9, 1969

Exhibit C

ATTACHMENT A

MEMORANDUM

TO: Mayor and Town Council, Town of Normal
Mayor and City Council, City of Bloomington

FROM: Town Administrator and Town Attorney, Town of Normal

City Manager and Corporation Counsel, City of Bloomington

SUBJECT: CATV

DATE: August 2, 1968

BACKGROUND—Last year the Bloomington City Council and the Town of Normal Board of Trustees agreed to cooperate on the possible awarding of a joint CATV franchise to a single firm. As a result of this, the Councils jointly hired the engineering firm of J. C. Barnard & Associates to work

with the Corporation Counsel and City Manager of the City of Bloomington and the Attorney and Administrator of the Town of Normal in preparing a franchise ordinance proposal and bidding procedures for a CATV franchise. The Consultant assisted the attorneys in preparing such an ordinance which was deemed to be in the best interest of the citizens of the Town of Normal and the City of Bloomington and the ordinance was adopted by both Councils. Included in the ordinance were bonding and performance requirements that applicants would be required to meet. Following adoption of the ordinance by both Councils a joint CATV franchise bid was opened May 29, 1968 at the Bloomington City Hall for Bloomington and Normal. The communities then had until August 29, 1968 in which to evaluate the applicant's qualifications and their bids. Copies of the bids were distributed to the members of the respective city Councils, to the press and to each of the bidders. An additional copy went to J. C. Barnard & Associates who was asked to review the bids and to make its recommendation to the Manager, Administrator and Attorneys. A copy of the consultant's recommendation is included with this report.

REVIEW AND RECOMMENDATIONS—The City Manager, Town Administrator and Attorneys of the municipalities met recently with representatives from GT & E Communications Inc., Bloomington-Normal Perfect Picture Company and had a telephone conversation with a third applicant, Tele-Cable Corporation. These meetings were held separately with each of the applicants. The opportunity was afforded to each applicant to explain any portion of his bid and to ask questions of the municipal representatives. The city officials also had an opportunity to review portions of the bid proposals with the applicant concerned and to ask questions of the applicants.

The Consultant's report correctly states information about each of the bid proposals. The Bloomington-Normal

Perfect Picture Company did not meet the requirements outlined in the ordinance in that it did not agree to proceed with the installation of a CATV system nor did it offer to put up the required performance bond until assurance is received from the Federal Communications Commission that distant stations can be received. This is a complete departure from the approach outlined in our ordinance, and to consider it would require an ordinance change. In preparing the ordinance this was specifically covered to require providing the performance bond and also requiring immediate steps to be taken to begin the installation of a CATV system in Bloomington and Normal with certain deadlines established. If the Councils of Bloomington and Normal wish to approve the requested ordinance changes the Manager, Administrator, and two municipal attorneys concur in the Consultant's recommendation that all bids be rejected. All those interested in bidding in the manner proposed by the Bloomington-Normal Perfect Picture Company would then have the same opportunity to bid. This might open the field to additional bidders but also it might result in the loss of the present applicants as they would not be required to resubmit. Unless a different approach is adopted Bloomington-Normal Perfect Pictures must be eliminated from consideration.

As to the two remaining bids, it appears that the proposed rate schedule of GT & E gives a slight overall advantage. There is a 5¢ differential in the single connection monthly base rate in favor of TeleCable. However, GT & E offers considerably lower monthly rates for each additional connection to the same premises, and offers 10% reduction on advance payment basis. The GT & E offer has no reservation on a pole attachment agreement, whereas there is a slight question on TeleCable. GT & E has submitted a complete initial layout for both towns, whereas TeleCable has not yet performed the same.

A decision by the Federal Communications Commission concerning Section 214 of the Communications Act regarding additional procedures on the part of telephone companies entering the CATV business had been rendered subsequent to our taking bids on May 29, 1968. In order to clear this matter we questioned representatives of GT & E Communications Inc. as to whether the recent "214" decision by the FCC did in any way affect the validity of their bid or ability to perform within the time limitations of our ordinance. They stated that this decision did not affect their bid or performance. Therefore, if GT & E Communications Inc. accepts the franchise we would expect to hold them strictly to the performance deadlines.

In summary GT & E Communications Inc. has the most favorable bid and its acceptance would result in CATV service being available to the public at the earliest possible time.

In view of the Consultant's report and with a deadline of August 29 for awarding of a CATV franchise under the ordinance and bidding proposal, our recommendations are as follows:

- A. That the Town of Normal Board of Trustees at its meeting on August 5, 1968 authorize granting of a CATV franchise to the GT & E Communications Inc. and the Attorney be instructed to prepare the CATV franchise ordinance, subject to the Bloomington City Council taking similar action.
- B. That the Bloomington City Council at its meeting of August 12, 1968 authorize granting of a CATV franchise to GT & E Communications Inc., and adopt the CATV franchise ordinance as prepared by the Bloomington corporation counsel.
- C. That the Town of Normal Board of Trustees at its meeting of August 19, 1968 adopt the CATV fran-

chise ordinance as prepared by the Normal Town Attorney.

Respectfully submitted,

For the City of Bloomington:

/s/ S. W. McALLISTER
S. W. McAllister, City Manager

.....
James R. DePew, Corporation
Counsel

For the Town of Normal:

/s/ GORDON B. JAEGER
Gordon B. Jaeger, Administrator

.....
Robert Fleming, Town Attorney

REPORT ON CATV FRANCHISE APPLICATIONS PREPARED FOR THE CITY OF BLOOMINGTON, ILLINOIS AND THE TOWN OF NORMAL, IL- LINOIS

The attached "Franchise Proposal Check List" provides a quick comparison between the proposals and the provisions of Ordinance Number 1968-27 of the City of Bloomington and Ordinance Number 715 of the Town of Normal.

As can be seen from this check list, the proposal of the Bloomington-Normal Perfect Picture Company fails to meet the requirements of the subject ordinances in several substantial matters.

Cover letter received from Bloomington-Normal Perfect Picture Company with application for CATV franchise asked that the letter be included as part of the application.

Certain portions of this cover letter seek to obtain franchise and operate system in a manner contravening, in substantial manner, the provisions of the ordinances under which the application was filed.

The first sentence on Page 3 of subject letter is a statement—the net effect of which is to completely rescind Section 7 of the existing Ordinance. Granting of a franchise with this statement included as one of the conditions permits the applicant to accept the franchise without any obligation to attempt to meet the time of performance established by the subject ordinances. Granting of the requested changes would in fact permit this applicant to accept the franchise award and not actually construct any system during the 15 year life of the grant. Inclusion of the delays requested would result in delay in construction by at least many months with resultant lack of service to the residents and loss of revenue to the municipalities.

The apparent intent of this applicant is clarified by the first sentence of the second paragraph on Page 3 of said letter. There, this applicant has indicated that, despite the provision of Section 7(a) of the Ordinance, a request for waiver to the Federal Communications Commission will be filed within 90 days in lieu of the 30 days established by the ordinance.

The last line on the first page of the letter from the Economy Finance Corporation indicates that adequate financing commitment for this applicant has not been made within the requirements of the subject ordinances.

Maps included in the "TV Factbook" and the "CATV & Station Coverage Atlas" published by Television Digest, Incorporated, Washington, D. C. both indicate that the Grade B contour of WCHU Channel 33, Champaign covers a portion of the City of Bloomington. This applicant does not propose to include this channel despite the requirements of Section 8(i) of the subject ordinances.

Any claims to lack of financial viability for a system without distant stations would tend to be refuted by the agreement on the part of the other two applicants to concur with the time requirements of the subject ordinances.

The only way that any further consideration could be given to this application would be to reject all proposals, amend the enabling ordinance as requested by Bloomington-Normal Perfect Picture Company and request new proposals on the basis of the amended ordinance. Under these circumstances, we recommend that the proposal of the Bloomington-Normal Perfect Picture Company be rejected as not responsive to the request for proposals.

The application from the Telecable Corporation fails to meet the requirements of the subject ordinances in one substantial matter. The cover letter attached to the Telecable application places a condition on its bid making same subject to negotiation of pole attachment agreements with the local telephone and electric utilities at reasonable rental rates. Section 4(i) of the subject ordinances clearly places the responsibility for this matter on the Franchisee and it does not seem advisable for the municipalities to become a party in this matter. If the franchise is awarded to the Telecable Corporation and excessive delays are experienced in securing pole permits caused by circumstances beyond the control on the Franchisee, Section 7(d) of subject ordinances provides for extension of certain time limits at the discretion of the respective Councils.

This appears to be adequate relief for the pole attachment situation. Therefore, said application should be rejected.

The proposal received from GT&E Communications appears to meet all requirements of Ordinance Number 1968-27 of the City of Bloomington and Ordinance Number 915 of the Town of Normal. Therefore, we recommend award of the franchise to GT&E Communications.

This award will enable the residents of Bloomington and Normal to purchase CATV service at the earliest practicable date if they so desire, will generate a minimum of approximately \$7000 per year in franchise and personal property taxes and will provide the inhabitants with distant signal service as soon as the FCC provides authorization for same.

A further minor advantage of the GT&E Communications proposal is that the subscribers to the service may pay the lowest of the three proposed rates if they choose to exercise the annual payment discount option.

P

FRANCHISE PROPOSAL CHECK LIST

	BLOOMINGTON- NORMAL PERFECT PICTURE CO.	GTE & COMMUNICATIONS INC.	TELESCABLE
<u>RE OF PERFORMANCE</u>			
SECURE PERMITS	NO	/ / /	NO
COMMENCE CONSTRUCTION	NO	/ / /	/ / /
COMMENCE OPERATION	NO	/ / /	/ / /
COMPLETE INITIAL AREA	NO	/ / /	/ / /
<u>INSTRUCTION AND OPERATIONAL STANDARDS</u>			
HANDBOOK B1	/ / /	/ / /	/ / /
24 HOUR PER DAY	/ / /	/ / /	/ / /
BASEBAND CHARACTERISTICS	/ / /	/ / /	/ / /
ECHO EFFECTS	/ / /	/ / /	/ / /
SIGNAL LEVEL	/ / /	/ / /	/ / /
SPURIOUS RADIATION	/ / /	/ / /	/ / /
NO COLOR DEGRADATION	/ / /	/ / /	/ / /
LOCAL STATIONS INTERFERENCE	NO-MINOR*	/ / /	MINOR*
<u>FEE TO TOWN</u>			
SERVICE WITHOUT CHARGE	/ / /	/ / /	/ / /
EMERGENCY ALERT	/ / /	/ / /	/ / /
FRANCHISE TAX	/ / /	/ / /	/ / /
<u>BOND</u>			
BID BOND	NO	/ / /	/ / /
PERFORMANCE BOND	NO	/ / /	/ / /
<u>APPLICATION FORM</u>			
COMPLETE	/ / /	/ / /	/ / /
BOND OR CHECK	/ / /	/ / /	/ / /
FILING FEE	/ / /	/ / /	/ / /
FINANCING ASSURANCE	NO	/ / /	/ / /
<u>FEES</u>			
<u>SERVICE CONNECTION</u>	FIRST \$10.00 ADDITIONAL TV 2.00 D ADDITIONAL FM 2.50 D APARTMENT NEGOTIATED BUT LESS THAN ABOVE HOTEL-HOTEL FIRST 4.70 FIRST ADDITIONAL TV 1.50 ADDITIONAL FM 1.50 E NEGOTIATED BUT LESS THAN ABOVE HOTEL-HOTEL FIRST EACH NEXT 29 EACH NEXT 20 EACH ADDITIONAL NOT SPEC.	\$10.00 A \$5.00 \$5.00 NONE T&H .00 .00 .00 .00 .00 .00 .00 .00 \$.60 MIN.	\$9.95 S-C 5.00 C 5.00 G 5.00 N T&M 4.00 1.25 1.25 4.95 2.50 4.95 1.50 1.25 1.00 5.00
<u>MONTHLY</u>			
<u>LOCATION</u>			
A WAIVED BEFORE THE OFFICIAL IN-SERVICE DATE			
B SPECIAL COLLEGE STUDENT RATE \$5.00			
C NO SCC FOR LIMITED PERIOD AROUND "TURN-ON" TIME.			
D NO CHARGE AT TIME OF FIRST CONNECTION			
E \$0.75 FOR ADDITIONAL FM OVER 1ST FM			
F SUBJECT TO A 10% DISCOUNT FOR ANNUAL PAYMENT			
THESE PROPOSALS DID NOT SPECIFICALLY MENTION THE INTENTION OF INCLUDING WGNV CHANNEL 43 BLOOMINGTON ON A "WHEN ON THE AIR" BASIS. THIS ITEM IS OF AN INDEFINITE NATURE AND THEREFORE SHOULD NOT BE GIVEN ANY SERIOUS CONSIDERATION AT THIS TIME.			

BEST COPY AVAILABLE

from the original bound volume

<u>CHANNELS</u>		<u>LOCATION</u>	<u>NETWORK</u>	<u>BLOOMINGTON- NORMAL PERFECT PICTURE CO.</u>	<u>OTLE COMMUNICATION INC.</u>	<u>TELECABLE</u>
WCIA	3	CHAMPAIGN	CBS	/	/	/
WGN-TV	9	CHICAGO	IND.	/**	MW	-MW
KPLR-TV	11	ST. LOUIS	IND.	MW	N.P.	N.P.
WTTW	11	CHICAGO	EDUC.	/**	N.P.	N.P.
WILL-TV	12	URBANA	EDUC.	/	/	/
WAND	17	DECATUR	ABC	/	/	/
WIRL-TV	19	PEORIA	ABC	/	/	/
WICS	20	SPRINGFIELD	NBC	***	/	***
WEEK	25	PEORIA	NBC	/	/	/
WMGO-TV	31	PEORIA	CBS	/	/	/
WFLD	32	CHICAGO	IND.	/**	MW	-MW
THU	33	CHAMPAIGN	NBC	NO	/	/
WGNS	43	BLOOMINGTON	BPCT	MINOR*	/	MINOR*
EMERGENCY		LOCAL		/	/	/
TIME-WEATHER		LOCAL		/	/	/
NEWS		LOCAL		/	/	/
FM		AS AVAILABLE		/	/	/

* THESE PROPOSALS DID NOT SPECIFICALLY MENTION THE INTENTION OF INCLUDING WGNS CHANNEL 43 BLOOMINGTON ON A "WHEN ON THE AIR" BASIS. THIS ITEM IS OF AN INDEFINITE NATURE AND THEREFORE SHOULD NOT BE GIVEN ANY SERIOUS CONSIDERATION AT THIS TIME.

** NO INDICATION THAT MICROWAVE RELAY WOULD BE REQUIRED FOR THESE CHANNELS. THE DISTANCES INVOLVED STRONGLY SUGGEST THAT THIS REQUIREMENT DOES IN FACT EXIST.

*** INCLUSION NOT SIGNIFICANT SINCE PROGRAMS ARE PROVIDED BY WGNV CHANNEL 33 WHICH OPERATES AS A SATELLITE OF WICS.

N.P. NOT PROVIDED WHICH IS A FRANCHISEE PREROGATIVE.

BEST COPY AVAILABLE

from the original bound volume

AFFIDAVIT

Date: November 18, 1968

Norfolk, Virginia

I, Rex A. Bradley, being first duly sworn, do hereby depose and state that I am Vice President and General Manager of TeleCable Corporation and the following facts are true to the best of my personal knowledge and belief:

(1) TeleCable Corporation has not filed a formal application for pole line attachment agreements with General Telephone Company of Illinois for the reason that it was following the procedure encountered in efforts to obtain pole line attachment agreements in other cities of the United States. TeleCable has applied for franchises in many cities. In our experience in other cities, the general policy encountered is one of the Bell System companies, which requires that the applicant for pole attachment agreements must have a City franchise in hand before an attachment agreement will be considered by the telephone company.

(2) Since the policy of the Bell System companies appears to be universal with Bell, TeleCable assumed that a similar procedure would be followed by General Telephone Company of Illinois. Thus TeleCable's effort was to obtain the City franchise first, *then* apply for permission of the General Telephone Company of Illinois to attach cable to their poles.

(3) In the joint meeting of the City Councils of Normal and Bloomington, Illinois on August 15, 1968, Mr. Malone of General Telephone Company of Illinois, in response to series of questions from the Council and applicants for the CATV franchise, refused to state whether pole attachment agreements would be granted any CATV franchise holder for poles in Bloomington and Normal, stating that he did

not know what the policy of his company was regarding such agreements.

(4) In the same joint Council meeting, representatives of *G. T. and E. Communications, Inc.*, the subsidiary of General Telephone Company of Illinois, stated that if granted the franchise *G. T. and E. Communications, Inc.* would construct the cable system without the necessity for obtaining a certificate of convenience and necessity required by a lease-back arrangement with General Telephone Company, which had been their original proposal.

(5) The very positive impression created as a result of statements and responses to questions by Mr. Malone, representing General Telephone Company of Illinois, and representatives of *G. T. and E. Communications, Inc.* was that *G. T. and E. Communications* could commence CATV service to the two cities at an earlier date than TeleCable because TeleCable Corporation had made its bid contingent upon its ability to negotiate satisfactory pole attachment agreements with General Telephone Company of Illinois, whereas *G. T. and E. Communications, Inc.* had no such problem. It is my opinion that this was a deliberate and desired impression created by spokesmen of General Telephone Company of Illinois and *G. T. and E. Communications, Inc.*

/s/ REX A. BRADLEY
Rex A. Bradley

Sworn to and subscribed before me
this 18th day of November, 1968.

/s/ BETTY S. WILLIAMS

My Commission expires: June 6, 1971

ATTACHMENT C

State of Illinois }
County of McLean } ss

AFFIDAVIT

I, DAVID DAVIS, JR., of full age, being duly sworn on my oath depose and say:

1. I am an attorney at law of the State of Illinois.
2. The law firm with which I am associated represents GT&E Communications, Inc.
3. I was present at the joint meeting of the city councils of Bloomington and Normal, Illinois, on the evening of August 15, 1968, which considered applications for CATV franchises.
4. A tape recording was made of the aforesaid joint council meeting and is in the custody of the City Clerk of the Town of Normal, Illinois.
5. Attached hereto and made a part hereof is a true and correct transcript of portions of the aforesaid tape which I have listened to and have compared with the attached transcript. The individuals designated on the left hand side of the attached transcript are to the best of my recollection, the persons who made the statements attributed to them.
6. Mr. Fleming is the Town Attorney of the Town of Normal, Illinois, Mr. Baugh is the Mayor of Normal, Illinois, Mr. Bradley is Vice President of TeleCable Corporation, Mr. Ives is President of Bloomington-Normal Perfect Picture Co. and Mr. Bristol is a representative of GT&E Communications, Inc.

/s/ DAVID DAVIS, JR.
David Davis, Jr.

Subscribed and sworn to before me
this 16th day of December, 1968.

/s/ DONNA S. DICKSON
Notary Public

My commission expires July 19, 1971.

TRANSCRIPT

FLEMING:

One of the basic questions that I think has come up and again everybody's hindsight is better than their foresight—but one of the questions that has come up here at this point is—When are you willing to start construction? When do you commit to start construction?

- (a) Immediately? [telephone interruption—]
- (a) When would you start construction immediately if a franchise is awarded? or
- (b) At the time the waiver of local signals is obtained from the Federal authorities? or
- (c) At the time the distant signal waiver is obtained?

I ask that question in the same order that you folks will ask the Telecable representative in the first instance and if you will answer that question.

Yes sir.

BRADLEY:

I'm Rex Bradley (Telecable)—we would comply with the FCC requirement which requires that we notify the television stations and the FCC the television stations we intend to carry on the cable and they have 30 days in which to object. If there is no objection within the 30 days then we are free to go ahead. This would be our procedure. This is not really a waiver, although it may sound as such—the notification requirement.

FLEMING:

In other words, if the local (if I interpret your answer correctly for everyone's benefit) if the local stations did not object you would be prepared to go ahead unless the distant stations did, or vice versa—Is this correct?

BRADLEY:

The distant station and I'll repeat I'm not a lawyer but—I don't think the distant stations would have any basis for objecting to our original start-up which would involve only those signals from within the market which are authorized in the general second report and order, so if there were any objections, it would be from one of those stations which was going to be on the cable initially.

FLEMING:

Is there any question with regard to that answer?

UNIDENTIFIED VOICE:

In the event that there was no objections, then how long after that would the structure start as far as the . . .

BRADLEY:

I have to give the same waiver, sir, as was given by a fellow spokesman on the other side of the room. The FCC is completely unpredictable, bogged down in red tape and I don't know when they would give us a decision.

UNIDENTIFIED VOICE:

They really would have to have a series of hearings undoubtedly.

BRADLEY:

It could result in a hearing. Yes Sir.

FLEMING:

Until you have their permission, you would not start?

BRADLEY:

That's right.

FLEMING:

The second group, Mr. Ives.

IVES:

I think that we would stick to our position as we have asked for and that is that we'd be in the same position initially of notifying the station. I think you'll get objections to that based on my experience in this market area of Champaign.

FLEMING:

I'd like for you just to stick with the question and then when you have your rebuttal in a minute why go off any way you want to.

IVES:

Well, we would put the out the same notification immediately. We would not propose to start construction until after we had received a waiver for the distant signals.

UNIDENTIFIED VOICE:

General Tel or Gentec.

DAVIS:

GTEC.

FLEMING:

GTEC.

CLARE BRISTOL:

Clare Bristol, GTEC, GT&E Communications Incorporated. We would have the same procedures to follow, of course. The notification to broadcasters 30 days ahead of commencement of service. We would start construction on or before 180 days after this franchise is awarded and accepted

. . . .

FLEMING:

The question that I'm going to propose—maybe I ought to put it in this fashion—is your answer the same as theirs, aside from your construction schedule. In other words, these people have both just stated that they would not start construction until such time as they had approval from the federal authorities. Expecting objections from the local stations to start with and going back to when we interviewed you before and trying to clarify the situation on it. At this point is your answer the same as theirs? You have a construction schedule but I take it that it does not go into effect until you have had approval from the federal authorities? Is this correct? And I'm not trying to put you on the spot—I'm trying to clarify the position of the various companies for everyone's benefit.

* * * *

BAUGH:

I think, if I may, that the whole question's very simple. We're talking technicalities on a simple question: Are you going to go ahead and start construction even though the local stations object?

BRISTOL:

Yes.

BAUGH:

I think that's exactly what we want to know.

ATTACHMENT D

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

File No. P-C-7213

In the Matter of:

GENERAL TELEPHONE COMPANY OF ILLINOIS

Application for certification under Section 214 of proposed
facilities in Bloomington and Normal, Illinois

Reply to Petitions To Deny

General Telephone Company of Illinois ("General"), the applicant in File No. P-C-7213, hereby replies, pursuant to Paragraph 5 of the Commission's "Interim Procedures,"¹ to the "Petition to Deny Application for Section 214 Certification" filed on or about October 21, 1968 by Telecable Corporation ("TeC") and to the "Petition to Deny or Designate for Hearing" filed on or about October 22, 1968 by Bloomington-Normal Perfect Picture Co. ("BNPP") in connection with the captioned application.² In support of this reply, the following is shown:

1. General's application in File No. P-C-7213 is for a certificate under § 214 of the Communications Act of 1934, as amended (the "Act"), that the construction and operation of wide-spectrum cable distribution facilities in General's exchange serving Bloomington and Normal, Illinois, is required by the public interest, convenience and necessity.

¹ Interim Procedures for Filing Section 214 Applications to Furnish Channel Facilities to CATV Operators, FCC 68-816 (August 9, 1968).

² In accordance with § 1.45(b) of the Rules, General's reply to the two separate "petitions"—the only responsive pleadings of which General is aware—is set forth in a single pleading.

2. General's application is filed under protest in accordance with the Commission's decision in *General Telephone Company of California*, 13 F.C.C. 2d 448 (1968),³ for General contends that, as a "connecting carrier,"⁴ it is not subject to § 214 of the Act and, furthermore, that § 214 is not applicable to the proposed facilities.

3. Pursuant to Paragraph 1 of the Commission's Interim Procedures, copies of General's applications were served upon the two community franchising authorities—the Normal Town Council and the Bloomington City Council, the successful applicant for a CATV franchise in the two communities—GT&E Communications Inc. (GTEC),⁵ as well as the two unsuccessful, and disgruntled, franchise applicants—TeC and BNPP.⁶ These disgruntled franchise applicants now predictably⁷ seek to have the Commission deny General's application.

³ While General was not a party to said proceeding, certain of its affiliates, who were parties, have filed an appeal in the United States Court of Appeals for the District of Columbia Circuit pursuant to § 402(b)(7) of the Act and § 10 of the Administrative Procedure Act.

⁴ See §§ 2(b)(2) and 3(u) of the Act.

⁵ As the Commission has been apprised since at least September 10, 1965, GTEC is an affiliate of General engaged in the furnishing of CATV service in communities both within and without the territories served by General System telephone companies. See General System Ex. 1, Att. B, Docket No. 17333. That GTEC is General's customer was reflected in the Commission's Public Notice W-2 dated October 18, 1968. In any event, this fact was obviously known to TeC and BNPP and the two franchising authorities. Thus the BNPP charges of "intentional non-disclosure," "lack of candor" and "willful deceit" border on the irresponsible.

⁶ There are no "existing" CATV operators in either Bloomington or Normal and, to General's knowledge, there are no other "proposed CATV operators" in either community.

⁷ During the August 15, 1968 joint meeting of the Bloomington and Normal Councils (see Ives Affidavit, paragraph (6), attached to both the TeC and the BNPP petitions), representatives of TeC and BNPP repeatedly warned the Councils that they had been advised by their "high-priced Washington lawyers" that General would have to obtain construction authority under § 214 and that General wasn't "going to get it" if objections were filed.

4. In the first place, it should be noted that the petition filed by TeC is deficient for having failed to comply with Paragraph 4 of the Commission's Interim Procedures. Thus, while the certificate of service attached to General's copy of the TeC petition reflects service upon General, BNPP and, somewhat anomalously, the Chief of the Commission's CATV Task Force,⁸ it fails to indicate service upon GTEC⁹ and the two community franchising authorities.

5. Secondly, both the TeC petition and the BNPP petition, by combining an opposition to a grant of General's application—a matter over which the Chief of the Common Carrier Bureau has delegated authority to act¹⁰—with a request for Commission injunctive or other relief against GTEC, are defective under § 1.44(a) of the Rules.

6. The TeC and BNPP petitions both fail to grasp that § 214 of the Act was designed to prevent wasteful duplication or unnecessary construction of common carrier facilities. No showing is made by either TeC or BNPP that the proposed construction and service would be unnecessary

Nevertheless, both councils awarded franchises to GTEC. Each franchise requires that construction of facilities must commence no later than March 15, 1969 and that 30% of the total service area must be in service by September 10, 1969. Moreover, each franchise provides that no extension of time for this performance will be afforded by reason of a delay occasioned by regulations or requirements arising out of the applicability of § 214 of the Act. GTEC accepted these franchises and posted performance bonds, in the amount of \$200,000 each, with Bloomington and Normal, apparently with confidence in the integrity, efficiency and essential fairness of Commission processes.

⁸ Compare § 0.289 of the Rules with § 0.294(a) of the Rules.

⁹ Counsel for General were subsequently advised that counsel for TeC made a good faith, if belated, effort to effect service upon GTEC. There is no evidence, however, that counsel for TeC has ever sought to remedy this deficiency with respect to the councils of Bloomington and Normal from whose decision he is essentially appealing.

¹⁰ See § 0.294(a) of the Rules.

or in any way duplicative. Rather the TeC and BNPP petitions view § 214 of the Act as providing a forum for disgruntled, inadequate and unsuccessful franchise applicants like TeC and BNPP to appeal the determinations of lawfully constituted local franchising authorities and thereby delay or indeed prevent the rendition of required common carrier service which has been ordered by the successful franchise applicant under valid outstanding tariffs.¹¹ General has affirmatively shown in its application that a grant thereof is appropriate. Nothing alleged by TeC or BNPP in any way negates that showing.

7. TeC and BNPP attempt to create the impression that it was somehow a result of General's pole attachment policies that neither one of them was awarded the franchise. Whatever their relevance here, these allegations are false. Indeed, this is shown by Exhibit C attached to the TeC petition. There it is shown that:

"The Bloomington-Normal Perfect Picture Company did not meet the requirements outlined in the ordinance in that it did not agree to proceed with the installation of a CATV system nor did it offer to put up the required performance bond until assurance is received from the Federal Communications Commission that distant stations can be received. This is a complete departure from the approach outlined in our ordinance, and to consider it would require an ordinance change."¹²

¹¹ This Commission has previously stated that it did not contemplate the regulation of "the award of CATV franchises." 1 F.C.C.2d 453, 466 (1965).

¹² TeC is in error in its statement in paragraph 9 of its petition that BNPP's bid was conditioned on its ability to negotiate pole attachment agreements. The BNPP bid contains no such condition. Indeed, Mr. Ives, the President of BNPP, had executed an application for channel service from General on February 22, 1966, prior to the April 6, 1966 letter from this Commission requiring that such service be provided under tariffs filed with this Commission.

8. What the TeC petition does not disclose is that the TeC bid was equally defective. At the August 15, 1968 joint council meeting referred to in paragraph (6) of the Ives affidavit which is attached to both the TeC and BNPP petitions, representatives of TeC advised the councils that TeC, also, would not agree to proceed with the installation of a CATV system or to put up the required performance bond until assurance was received from the FCC that distant stations can be received.¹³

9. Stripping away all the irrelevancies and misstatements, the Commission is here presented with a clear case of two disgruntled franchise applicants joining together, with common affidavits, to impede

¹³ Other deficiencies in the TeC bid are apparent from the TeC petition. Thus it is shown from Exhibit C to the TeC petition that TeC had not been sufficiently interested in the franchise to submit a complete initial layout for both communities. Similar lack of interest is evidenced by TeC's complete reliance on the hearsay affidavits of its competitor's principals for its delineation of the supposed pole attachment policies of General.

FCC 69-485
30943

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554

DOCKET No. 18538
File No. SR-3695-N

In the Matter of
PETITION BY TELECABLE CORPORATION TO STAY CONSTRUCTION
OR OPERATION OF A CATV SYSTEM IN BLOOMINGTON
AND NORMAL, ILLINOIS BY GT&E COMMUNICATIONS, INC.

Order to Show Cause

Adopted: May 5, 1969 Released: May 6, 1969

By the Commission:

1. The TeleCable Corporation has petitioned the Commission under the provisions of Section 74.1109 of the Rules and Regulations and under Section 4(i) of the Communications Act for a temporary order directed against GT&E Communications, Inc. to prevent the further construction or operation of CATV facilities in Bloomington and Normal, Illinois. TeleCable's petition seeks to maintain the status quo until such time as the Commission acts on TeleCable's petition for permanent relief.¹

2. The gravamen of the petition is that GT&E, a wholly owned subsidiary of General Telephone Company of Illinois, has started or is about to start construction of CATV facilities without first having obtained the required Section 214 authority under the Commission's decision in Docket 17333 (13 FCC 2d 448 (1968)). TeleCable alleges that,

¹ TeleCable's petition for a temporary restraining order was filed on March 14, 1969. A second petition, for permanent relief, was filed on March 26, 1969, but this petition has not yet been considered by the Commission.

taken together, the actions of General and its wholly owned subsidiary in the Bloomington and Normal area have been anti-competitive, illegal in nature, and contrary to the public interest.

3. TeleCable alleges that in the spring of 1968, three companies—TeleCable, Bloomington-Normal Perfect Picture and GT&E—applied for local CATV franchises in Bloomington and Normal. Prior to and in connection with these applications, TeleCable and Perfect Picture had sought agreements from General of Illinois, the local telephone company, to rent space on telephone company poles, a substantial portion of which are jointly used or controlled with the Illinois Power Company, for their proposed CATV facilities. It is further alleged that General refused to lease such space; that it would offer only to provide CATV facilities under its established tariff provisions; and that if TeleCable and Perfect Picture were to accept this offer, General would have its wholly owned subsidiary, GT&E, withdraw from the local CATV franchise competition. This offer was rejected by TeleCable and Perfect Picture and subsequently the local franchise was granted to GT&E.

4. After GT&E was awarded the franchise, General filed with the Commission an application (P-C-7213) under Section 214 for authorization to construct and operate the facilities necessary to provide CATV channel service to GT&E. The grant of this application was opposed by TeleCable and Perfect Picture and has not yet been acted upon by the Commission. GT&E, it is alleged, has now begun or is about to begin the construction of its "own" facilities utilizing pole attachment rights to poles under the control, in whole or in part, of the Illinois Power Company. And, on April 9, 1969, General sought to withdraw its Section 214 application since its proposed customer, its wholly owned subsidiary, had cancelled its order for telephone company channel service.

5. TeleCable alleges that it has been or will be foreclosed from operating a CATV system in the Bloomington and Normal area by the actions of General and GT&E and seeks immediate relief to maintain the status quo until such time as the Commission rules on General's 214 application and TeleCable's petition for permanent relief.

6. While the petitioner makes reference to Section 74.1109, it is apparent that its real complaint goes beyond the intent and scope of that Section of our rules. However, although the facts alleged are not wholly identical, the problems raised in the petition here are similar to those involved in Dimension Cable TV, Inc. (16 FCC 2d 445 (1969)). We believe that this petition does raise substantial questions under the Communications Act of 1934, as amended.

7. In its decision in Docket 17333, *supra*, the Commission expressed its concern with the applicability of Section 214 to the provision of channel service by telephone companies and there determined that Section 214 required certification by the Commission prior to the construction and operation of such facilities. In the instant case, we are concerned with the actions of a local telephone company and its wholly owned subsidiary which, under the allegations here, operate to undermine our Section 214 decision by permitting a telephone company either not to seek such a 214 certification or, as here, to withdraw a pending application and attempt to accomplish a substantially identical result through the "separate" actions of a wholly owned subsidiary. A further question is raised by the alleged actions of a local telephone company, under the mantle of its exclusive franchise, attempting to deny entry into the CATV field by refusing to make pole attachment agreements with independent operators while at the same time permitting a wholly owned subsidiary to enter the CATV field through pole attachment agreements with a local utility which jointly uses such poles with the local telephone company. In view of the specific allegations, a substantial question

is raised whether the primary thrust of the local telephone company's actions is to retain to itself complete ownership and control of CATV distribution facilities within the community and to reject, directly or indirectly, attempts by independent CATV operators to own, construct or operate their own distribution facilities through appropriate pole attachment arrangements. Such activities, if established, would substantially lessen competition or restrain commerce or unlawfully create a monopoly (see *Mansfield Journal Co. v. FCC*, 86 U.S. App. D.C. 102; cf. *U.S. v. Griffith*, 334 U.S. 100; *Schine Chain Theatres v. U.S.*, 334 U.S. 110).²

8. We are here concerned with assuring compliance with the Communications Act of 1934, as amended, and Part 63 of our Rules and find that the public interest requires that the situation in Bloomington-Normal, Illinois be resolved expeditiously. Accordingly, the Commission finds that due and timely execution of its functions imperatively and unavoidably requires that the Examiner certify the record in this matter, upon its closing, immediately to the Commission for final decision. Expedition also requires that the parties file their proposed findings of fact and conclusions of law within twenty (20) calendar days after the date the record is closed.

9. In view of the foregoing, the Commission is of the view that the matter should be designated for hearing to explore the issues raised. Accordingly, It Is ORDERED, that pursuant to Sections 4(i), 4(j), 208, 214, 218, 312(b) and (c), and 403 of the Communications Act of 1934 as amended, General Telephone Company of Illinois and GT&E Communications, Inc. ARE DIRECTED TO SHOW CAUSE why they should not be ordered to CEASE AND DESIST from construction, operation and offering of CATV facilities in

² The Commission's continuing concern in this area is reflected in its Notice of Inquiry and Notice of Proposed Rule Making in Docket 18509, FCC 69-214, relating to affiliations between telephone companies and their CATV customers.

Bloomington and Normal, Illinois in violation of the Communications Act and that this matter Is DESIGNATED FOR HEARING in the Commission's offices in Washington, D. C. on a date and before an Examiner to be specified in a subsequent order on the following issues:

- (1) To determine all of the facts and circumstances surrounding:
 - (a) the negotiations and discussions for pole attachment agreements by and between TeleCable Corporation and Bloomington-Normal Perfect Picture on the one hand and General Telephone Co. of Illinois on the other hand;
 - (b) the relationship between GT&E Communications, Inc. and General Telephone Co. of Illinois;
 - (c) the request by General Telephone Co. of Illinois to withdraw its Section 214 application (P-C-7213); and
 - (d) the present and/or proposed plans or actions with respect to the construction and/or operation of CATV facilities in Bloomington and Normal, Illinois by GT&E Communications, Inc.
- (2) To determine whether in view of the relationship between GT&E Communications, Inc. and General Telephone Co. of Illinois and the evidence adduced pursuant to issue 1 above, the proposed actions by GT&E Communications Inc. and General Telephone are such as to require prior Section 214 certification by the Commission.
- (3) To determine whether the actions of General Telephone Co. of Illinois and GT&E Communications, Inc. vis-a-vis the TeleCable Corporation and Bloomington-Normal Perfect Picture are anti-competitive and monopolistic in nature, in contravention of the Communications Act or are otherwise contrary to the public interest.

- (4) To determine whether in light of the evidence adduced pursuant to the foregoing issues, General Telephone Co. of Illinois and GT&E Communications, Inc. jointly or separately should be directed to cease and desist from providing CATV facilities or services in the communities of Bloomington and Normal, Illinois.
- (5) To determine in light of the foregoing whether any other action should be taken by the Commission and the nature thereof.

IT IS FURTHER ORDERED, That the burden of proof with respect to Issue 1(a), 2 and 3 is upon the petitioner and that the burden of proof with respect to Issues 1(b), (c) and (d) is upon respondents, GT&E Communications, Inc. and General Telephone Company of Illinois.

IT IS FURTHER ORDERED, That TeleCable Corporation, Bloomington-Normal Perfect Picture, the Chief, Common Carrier Bureau and the Chief, CATV Task Force, ARE MADE PARTIES to the proceeding.

IT IS FURTHER ORDERED, That upon the closing of the record, it shall be certified immediately to the Commission for final decision, and that the parties hereto shall file proposed findings of fact and conclusions of law within twenty (20) days after the time the record is closed.

IT IS FURTHER ORDERED, That General Telephone Co. of Illinois and GT&E Communications, Inc. are directed to appear and give evidence with respect to the matters described above at a hearing to be held in Washington, D. C. at a time and place and before an Examiner to be specified in a subsequent order, unless the hearing is waived, in which event a written statement may be submitted within thirty (30) days of the service of this order.

IT IS FURTHER ORDERED, That TeleCable Corporation's petition IS GRANTED to the extent reflected herein, and otherwise IS DENIED.

It Is FURTHER ORDERED, That the Secretary of the Commission shall send copies of this order by certified mail, return receipt requested, to General Telephone Co. of Illinois, GT&E Communications, Inc., TeleCable Corporation and Bloomington-Normal Perfect Picture.

It Is FURTHER ORDERED, That to avail itself of the opportunity for hearing herein provided, General Telephone Co. of Illinois, GT&E Communications, Inc., TeleCable Corporation and Bloomington-Normal Perfect Picture shall file their appearances in accordance with Section 1.91(c) of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION
BEN F. WAPLE
Secretary

G
FCC 69-574
31386

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554

DOCKET No. 18538

File No. SR-3695-N

In the Matter of

PETITION BY TELECABLE CORPORATION TO STAY CONSTRUCTION
OR OPERATION OF A CATV SYSTEM IN BLOOMINGTON AND
NORMAL, ILLINOIS BY GT&E COMMUNICATIONS, INC.

Memorandum Opinion and Order

Adopted May 28, 1969; Released May 28, 1969

By the Commission: Commissioner Bartley absent.

1. This proceeding commenced with the issuance of an Order to Show Cause, FCC 69-485, released May 6, 1969, against General Telephone Company of Illinois (General)

and against its wholly-owned subsidiary, GT&E Communications, Inc. (GTEC) directing that a hearing be held to determine, *inter alia*, whether Section 214 certification by the Commission is required in connection with the construction and operation of CATV distribution facilities in Bloomington and Normal, Illinois; and if so whether either General or GTEC or both should be ordered to cease and desist from the construction and operation of CATV distribution facilities in those communities. The background facts are set forth in our show cause order, *supra*, and need not be repeated here.

2. Now before us is a "Petition For Immediate Temporary Prohibitory Order" filed by TeleCable Corporation on May 23, 1969, in which TeleCable asserts that temporary relief should be granted by the Commission in order to preserve the status quo in Bloomington and Normal during the pendency of this show cause proceeding. In support of its petition, TeleCable alleges that GTEC published an announcement on May 17, 1969, that it proposes to commence CATV service to one-fourth of Bloomington in June, 1969. A copy of the announcement is attached to the petition. Since the commencement of service appears to be imminent, and in view of the difficulty of withdrawing an existing service from subscribers, TeleCable requests that the Commission enter an order prohibiting General and GTEC from placing the CATV facilities into operation.

3. In a joint letter dated March 25, 1969, the Chiefs of the CATV Task Force and the Common Carrier Bureau advised General and GTEC that the Commission had under consideration TeleCable's petition for a temporary restraining order filed March 14, 1969, and that any construction of CATV distribution facilities undertaken in Bloomington or Normal would be at the risk of whatever action the Commission might take in connection with these pleadings. Thereafter, the Commission instituted this show cause pro-

ceeding. Nonetheless, the respondents apparently are proceeding with the construction of such facilities in Bloomington and Normal and, in an announcement published more than a week after the release of the order to show cause, have indicated an intention to commence service to one-fourth of Bloomington in June, 1969.

4. Unless we grant the relief requested by TeleCable, there appears to be a reasonable likelihood that CATV service will be commenced before a decision is issued in this case. We see no reason to await that eventuality but are convinced that the public interest requires the issuance of an order prohibiting the respondents from commencing CATV operations until the issues designated in this proceeding are resolved. Although there has not been time to receive and consider pleadings responsive to TeleCable's petition, the prohibition will have no adverse effect if neither General or GTEC is attempting to place such facilities into operation prior to the outcome of this proceeding. If they are proceeding in the manner charged, the substantial change in the situation in Bloomington and Normal would have a detrimental effect upon the public interest and should be prohibited. General and GTEC are again cautioned that to proceed with construction of CATV distribution facilities, which may later be the subject of a cease and desist order against their operation, is at their own risk and further that, under certain circumstances, the cost of unlawful construction or operation may be excluded from the rate base. *Cf. Ashtabula Telephone Company*, 17 FCC 2d 113 (1969).

5. ACCORDINGLY, It Is ORDERED That General Telephone Company of Illinois and GT&E Communications, Inc. ARE PROHIBITED from placing into operation any CATV distribution facilities in Bloomington or Normal, Illinois, pending resolution of the issues designated for hearing in Docket No. 18538, or until certification of such facilities by

the Commission pursuant to Section 214 of the Communications Act, Part 63 of the Rules, and established interim procedures, whichever first occurs.

FEDERAL COMMUNICATIONS COMMISSION
BEN F. WAPLE
Secretary

G
FCC 69R-270
33868

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554

DOCKET No. 18538

File No. SR-3695-N

In the Matter of

PETITION BY TELECABLE CORPORATION TO STAY CONSTRUCTION
OR OPERATION OF A CATV SYSTEM IN BLOOMINGTON AND
NORMAL, ILLINOIS BY GT&E COMMUNICATIONS, INC.

Memorandum Opinion and Order

Adopted June 16, 1969; Released June 17, 1969

By the Review Board: Board Member Berkemeyer absent.

1. This expedited proceeding involves the petition of TeleCable Corporation (TeleCable), which seeks to prevent the further construction or operation of CATV facilities in Bloomington and Normal, Illinois, by GT&E Communications, Inc. (GT&E Com). In an Order to Show Cause, FCC 69-485, 17 FCC 2d 517, released May 6, 1969, the Commission directed the General Telephone Company of Illinois (General) and GT&E Com to show cause why they should not be ordered to cease and desist from the construction, operation and offering of CATV facilities in

the communities noted above, and designated the matter for hearing.¹ The history of this proceeding is detailed in the Commission's Show Cause Order and need not be recited here. In brief, TeleCable alleges that General and GT&E Com have commenced construction of CATV facilities without first having obtained the required Section 214 authority under the Commission's decision in Docket No. 17333 (See *General Telephone Company of California*, 13 FCC 2d 448, 13 RR 2d 667 (1968)); and that the actions of these companies have been anti-competitive, illegal in nature, and contrary to the public interest. Presently before the Review Board is a motion to amend the Order to Show Cause, filed May 16, 1969, by the Common Carrier Bureau, which seeks an amendment of the Commission's Show Cause Order: (1) to reflect the fact that GT&E Com is a wholly owned subsidiary of General Telephone and Electronics Corporation (GT&E) (in its Order, the Commission referred to GT&E Com as the wholly owned subsidiary of General); (2) to make GT&E a party respondent to this proceeding; and (3) to amend various designated issues in this proceeding to include appropriate references to the parent company, GT&E.²

2. The Bureau, in its motion,³ alleges that GT&E Com is a wholly owned subsidiary of GT&E, and that majority

¹ By Memorandum Opinion and Order, FCC 69-574, FCC 2d , released May 28, 1969, the Commission prohibited General and GT&E Com from placing into operation any CATV distribution facilities in Bloomington or Normal, Illinois, pending resolution of the issues in the instant proceeding or certification of such facilities by the Commission.

² Also before the Board are: (a) comments in support of motion, filed May 23, 1969 by TeleCable; (b) opposition, filed May 28, 1969 by General and GT&E Com; and (c) reply, filed May 29, 1969, by the Common Carrier Bureau.

³ GT&E Com and General argue that the Bureau's pleading should be dismissed as an unauthorized petition for reconsideration of the Order to Show Cause. Considering the Bureau's requests, such argument is untenable and must be rejected. See *Atlantic Broadcasting Co. (WUST)*, 5 FCC 2d 717, 8 RR2d 991 (1966). The matter of GT&E's relationships with the parties respondent and its potential role in the ultimate resolution of this proceed-

voting control (92.08%) of General is also vested in GT&E. The Bureau's description of these corporate relationships has not been challenged in opposition, and, in fact, GT&E Com and General acknowledge the propriety of the Bureau's requested correction. The Order to Show Cause in this proceeding will, therefore, be modified in all appropriate portions of said Order to reflect the proper relationship of GT&E, GT&E Com and General.

3. In support of its requests for the specification of GT&E as a party respondent in this proceeding and appropriate modification of the issues herein, the Bureau submits that this proceeding is designed to determine whether the affiliated companies have, through their concerted action, sought either to undermine the Commission's Section 214 Decision, or have sought to retain, in an anti-competitive manner, complete ownership and control of the CATV distribution facilities in the subject communities. It is the Bureau's view that any investigation into these questions would not be complete without inquiry into the participation of the controlling corporation (GT&E) which, according to the Bureau, may have been responsible for the alleged acts of the respondents; and that the effectiveness of any cease and desist order which might issue herein would be dependent on its applicability to GT&E. In its comments in support of the Bureau's requests,⁴ TeleCable avers that GT&E's involvement in the subject cable service goes far beyond that of a mere holding company

ing were not considered by the Commission which, apparently, did misapprehend the actual corporate relationships involved. In such circumstances, the Board may appropriately consider the Bureau's requests even though they contemplate modification of the Commission's earlier action. It should also be noted in this regard that the Bureau's motion and related pleadings are properly being considered by the Board pursuant to its delegated authority. See *Florida-Georgia Television Company, Inc.*, 12 FCC 2d 332, released April 15, 1968.

⁴ GT&E Com and General erroneously argue that TeleCable is not authorized to file responsive "comments" and that only "oppositions" are authorized by Rule 1.45. See *Musical Heights, Inc.*, FCC 58-1094, 17 RR 1101, released November 21, 1958.

and contends that the Commission should investigate in this hearing the extent to which the parent corporation controlled or coordinated the activities of its subsidiaries in acquiring the Bloomington and Normal CATV franchise. TeleCable submits portions of the material allegedly filed by GT&E Com before the Bloomington and Normal governing councils, which indicates that GT&E, the parent corporation, "has agreed to advance the funds necessary for the construction and operation" of GT&E Com's cable systems; and that GT&E's president was quoted as saying, "we feel that whatever type of services will someday be provided by coaxial cable networks ought to be provided by us."

4. In their opposition, General and GT&E Com argue that the Commission has no authority to proceed against GT&E in this instance and that the Bureau has failed to indicate why GT&E's presence in this proceeding is essential to the effectiveness of any cease and desist order. Respondents contend that, with the exception of Section 218 of the Communications Act,⁵ "there is nothing in the Communications Act which brings General Telephone and Electronics Corporation within the jurisdiction of the Commission".⁶

5. It is uncontested that GT&E Com is a wholly owned subsidiary of GT&E and that GT&E also possesses 92.08 percent voting control of General. As noted in the

⁵ Section 218 of the Communications Act authorizes the Commission to inquire into the management of the business of all carriers subject to the Act and to obtain information from persons directly or indirectly controlling or controlled by such carriers "to enable the Commission to perform the duties and carry out the objects for which it was created."

⁶ Respondents also argue that the Commission erroneously assigned the burden of proof on the specified issues in this case. To the extent that the respondents petition for modification of such burden, their request is improper, as it is contained in a responsive pleading. See *Charles County Broadcasting Co., Inc.*, FCC 63R-76, 24 RR 1153; *Saul M. Miller*, FCC 62R-122, 24 RR 550.

Bureau's reply, Section 411(a) of the Communications Act provides, in part, that:

... it shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the charge, regulation, or practice under consideration, and inquiries, investigations, orders, and decrees may be made with reference to and against such additional parties in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers.

Considering the voting control held by GT&E in the common carrier, General, and in the subject CATV system, it is clear that GT&E would be "interested in or affected by" the disposition of the instant proceeding. Furthermore, the specified issues herein are designed, in essence, to determine whether the policies of the local telephone company and CATV system were jointly established in order to retain improperly the exclusive ownership and control of CATV distribution facilities within the communities by the telephone company. It would appear essential that the parent company, which proposes to finance the CATV facilities and which holds voting control of both the telephone and cable companies, be made part of such an inquiry; it is the parent company which may be in a position to establish, maintain and coordinate such policies. The Board, therefore, finds no procedural or substantive impediment to designating the parent company, GT&E, as a party respondent in this proceeding and to amending the specified issues herein to reflect such participation.⁷

⁷ Due to its voting control, a cease and desist order may ultimately be directed against GT&E. Issue 4 in this proceeding, as modified herein, would permit the issuance of such an order against General, GT&E Com and GT&E, jointly or separately. Consistent with our action here, we will also modify that portion of the Order to Show Cause which allocates the burden of proof under the specified issues, to reflect GT&E's participation in this proceeding.

6. ACCORDINGLY, IT IS ORDERED, That the motion to amend Order to Show Cause, filed May 16, 1969, by the Common Carrier Bureau, IS GRANTED; and

7. IT IS FURTHER ORDERED, That the Order to Show Cause (FCC 69-485, 17 FCC 2d 517, released May 6, 1969) in this proceeding IS MODIFIED in all appropriate portions thereof to reflect the proper corporate relationship of General Telephone and Electronics Corporation, GT&E Communications, Inc. and General Telephone Company of Illinois, as noted herein; and

8. IT IS FURTHER ORDERED, That General Telephone and Electronics Corporation IS MADE A PARTY to the proceeding; and

9. IT IS FURTHER ORDERED, That existing issues (1)(b), (2), (3) and (4) in this proceeding ARE MODIFIED as follows:

(1) To determine all the facts and circumstances surrounding:

(b) the relationship among GT&E Communications, Inc., General Telephone Company of Illinois, and General Telephone and Electronics Corporation;

(2) To determine whether in view of the relationship among GT&E Communications, Inc., General Telephone Company of Illinois, and General Telephone and Electronics Corporation and the evidence adduced pursuant to Issue 1 above, the proposed actions by GT&E Communications, Inc. and General Telephone Company of Illinois, are such as to require prior Section 214 certification by the Commission.

(3) To determine whether the actions of General Telephone Company of Illinois, GT&E Communications, Inc. and General Telephone and Electronics Corpo-

ration vis-a-vis the TeleCable Corporation and Bloomington-Normal Perfect Picture are anti-competitive and monopolistic in nature, in contravention of the Communications Act or are otherwise contrary to the public interest.

- (4) To determine whether in light of the evidence adduced pursuant to the foregoing issues, General Telephone Company of Illinois, GT&E Communications, Inc. and General Telephone and Electronics Corporation, jointly or separately, should be directed to cease and desist from providing CATV facilities or services in the communities of Bloomington and Normal, Illinois; and

10. IT IS FURTHER ORDERED, That the Order to Show Cause in this proceeding IS MODIFIED to reflect that the burden of proof with respect to Issues 1(b), (c) and (d) is upon respondents, GT&E Communications, Inc., General Telephone Company of Illinois and General Telephone and Electronics Corporation; and

11. IT IS FURTHER ORDERED, That General Telephone and Electronics Corporation is directed to appear and give evidence with respect to the matters described above and in the Order to Show Cause at a hearing to be held in Washington, D. C. at a time and place and before an Examiner to be specified in a subsequent order, unless the hearing is waived, in which event a written statement may be submitted within thirty (30) days of the service of this order; and

12. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send copies of this order and the Order to Show Cause (FCC 69-485, 17 FCC 2d 517, released May 6, 1969) in this proceeding by certified mail, return receipt requested, to General Telephone and Electronics Corporation; and

13. It Is FURTHER ORDERED, That, to avail itself of the opportunity for hearing herein provided, General Telephone and Electronics Corporation shall file its appearance in accordance with Section 1.91(c) of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

/s/ BEN F. WAPLE
Ben F. Waple
Secretary

[SEAL]

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

[35]

George H. Gage

was called as a witness and, after being first duly sworn, was examined and testified as follows:

* * * * *

[36] Communications, Inc.? A. Yes.

Q. What is that position? A. Vice-President.

Q. Mr. Gage, we have gone through three corporations, and can you tell us whether you are a director of any of those corporations? A. No, I am not.

Q. Do you hold any position, Mr. Gage, with General Telephone Company of Illinois? A. I do not.

Q. From the standpoint of stock ownership, if any, what relationship is there between General Telephone and Electronics Corporation and General Telephone Company of Illinois? A. General Telephone and Electronics Corporation owns in excess of 90 percent of the common shares of General Telephone of Illinois.

Q. That would be the voting stock? A. Voting stock, yes.

Q. I believe, in Illinois, preferred stock is entitled to a vote but it is not necessarily something of which you would have knowledge.

Do you know how the remaining stock in General Telephone Company of Illinois is distributed? A. I understand it is widely held by the public.

[37] Q. What is the ownership of GT & E Service Corporation? A. It is 100 percent owned by the parent corporation.

Q. That would be General Telephone and Electronics Corporation? A. Right.

Q. Could you tell us who holds the stock, if you know, of GT & E Communications, Inc.? A. GT & E Corporation, General Telephone and Electronics Corporation owns a hundred percent of GT & E Communications stock.

Q. Mr. Gage, do you have available to you on the stand current information concerning the officers and directors

of General Telephone and Electronics Corporation, GT & E Service Corporation, GT & E Communications, Inc., and General Telephone Company of Illinois? A. Yes, sir, I do.

Q. Can you tell me the date of the information which you have available to you? A. They are all May 14, 1969.

Q. Mr. Gage, would you identify for the record the officers of GT & E—Excuse me; strike that—the officers of General Telephone and Electronics Corporation and give both their names and positions? A. Leslie H. Warner, President and Chief Executive Officer.

[38] Q. Mr. Gage, the reporter has to get it, so any name that has any bit of unusual nature to it, you spell it for him, please, so as to make sure he gets them right. A. Theodore H. Brophy, B-r-o-p-h-y, Executive Vice-President and General Counsel; James J. Clerkin, C-l-e-r-k-i-n, Jr., Executive Vice-President—Telephone Operations; John J. Douglas, Executive Vice-President—Finance; Herbert F. Lullo, L-u-l-l-o, Executive Vice-President — Manufacturing; George H. Gage, Vice-President—Telephone Operations Staff; George W. Griffin, G-r-i-f-f-i-n, Jr., Vice-President—Public Relations; William H. Harrison, Vice-President and Comptroller.

W. R. Jarmon, J-a-r-m-o-n, Vice-President—Revenue Requirements; George P. Norton, Vice-President—Advertising; George E. Shertzer, S-h-e-r-t-z-e-r, Vice-President and General Attorney; William E. Neumeyer, N-e-u-m-e-y-e-r, Assistant Vice-President—Government Relations; Harold H. Howlett, H-o-w-l-e-t-t, Secretary; Richard F. Harvey, Treasurer; Paul Kavicky, Ka-v-i-c-k-y, Assistant Secretary; Daniel McKenna, M-c-K-e-n-n-a, Assistant Secretary; James M. Dunn, D-u-n-n, Jr., Assistant Treasurer.

Q. Mr. Gage, do all of these people or do they not hold identical offices insofar as job title is concerned with GT & E Service Corporation? A. Yes, they do.

Q. Are there any officers of GT & E Service Corporation [39] in addition to those you have named also officers of

General Telephone and Electronics Corporation? A. Would you repeat that, please.

Q. Yes, sir. Are there any officers of—I will rephrase it. Are there any officers of GT & E Service Corporation who are not also officers of General Telephone and Electronics Corporation? A. Yes, there are.

Q. Would you tell us who those people are and what their titles are, please? A. Gaylord E. Horton, H-o-r-t-o-n, Vice-President; W. H. Meyer—

Q. I believe it is H. W. Meyer— A. H. W.—correct—M-e-y-e-r, Vice-President; John B. Renwick, R-e-n-w-i-c-k, VicePresident and Comptroller—Telephone Operations; Bert L. Steele, S-t-e-e-l-e, B-e-r-t, Vice-President—Personnel Operations—Vice-President—Personnel, Telephone Operations; John E. Graham, G-r-a-h-a-m, Assistant Comptroller—Telephone Operations.

Q. Mr. Gage, I wonder if you would state for the record who the directors are of General Telephone and Electronics Corporation and, to the extent you have information available, as to the positions of people who are directors who you have not already identified, would you provide that for the record, too? A. Donald P. Power, Chairman of the Board of the [40] Corporation; Theodore S. Gary, G-a-r-y, Vice-Chairman of the Board of the Corporation; Thomas A. Boyd, B-o-y-d; James W. Button—

Mr. Lloyd: One moment, please. I would note for the record that Mr. Gage does not have the information available that the annual report for the parent corporation shows that Mr. Boyd is a retired Executive Vice-President of General Telephone and Electronics Corporation, now serving on the Board of Directors.

By Mr. Lloyd:

Q. Would you go ahead, Mr. Gage? Excuse the interruption, please. A. James W. Button, B-u-t-t-o-n, Senior Vice-President—Merchandising, Sears, Roebuck and Company; James J. Clerkin, Jr., Executive Vice-President—

Telephone Operations; Nelson J. Darling, Jr., D-a-r-l-i-n-g, Partner, Payne, Webster, Jackson and Curtis; John J. Douglas, Executive Vice-President—Finance; William M. Fuller, Partner, W. M. and A. P. Fuller; Richard W. Jones, J-o-n-e-s, President, Mitchum, Jones and Templeton, Inc., Investment Bankers; Herbert F. Lullo, Executive Vice-President—Manufacturing; George A. Murphy, Chairman of the Board, Irving Trust Company; Grier, G-r-i-e-r, D. Patterson, P-a-t-t-e-r-s-o-n, Senior Partner, Winston, Strong, Smith and Patterson; John B. Prizer.

Mr. Lloyd: The annual report will reflect that Mr. Prizer [41] is Vice-President and General Counsel of Penn Central Company.

The Witness: Gardiner, G-a-r-d-i-n-e-r, Symonds, S-y-m-o-n-d-s, Chairman of the Board, Penacoke, Inc.; Rupert C. Thompson, Jr., Chairman of the Board, Textron, Inc.; Leslie H. Warner, President and Chief Executive Officer.

By Mr. Lloyd:

Q. Would you tell us who the directors of GT & E Service Corporation are, please, Mr. Gage, and I think in this instance you have already identified, with one possible exception, what the positions of these people are, so you don't need to repeat that. A. Donald C. Power; Theodore S. Gary; Gene K. Beare.

Q. Do you know who Mr. Beare is? And that is B-e-a-r-e. A. He is presently, I believe, the President of Sylvania Electric, Inc.

Q. All right. A. Theodore F. Brophy; James J. Clerkin, Jr.; John J. Douglas; W. R. Jarmon; Herbert F. Lullo; Leslie H. Warner.

Q. Thank you, Mr. Gage.

Mr. Gage, do you, or would you tell us who the officers of GT & E Communications, Inc., are, including the particular offices which they hold? A. James J. Clerkin, President; George H. Gage, Vice-President; Winston F. Stewart,

Vice-President and General Manager; Lemuel Bishop,
B-i-s-h-o-p, Comptroller, Hal Howlett,

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[59] general telephone operating company presidents, subject: "Marketing CATV."

Mr. Lloyd: Could you use the record designation of the document.

Mr. Wholl: I have not had time to cross-reference the documents.

By Mr. Wholl:

Q. Was Mr. Stewart responsible for the liaison work of the new corporate subsidiaries? A. With who?

Q. Between Service Corporation and the operating companies. A. Insofar as matters might have related to G-Tech's operations, yes, he would share this responsibility with the rest of his staff.

Q. Let me show you a document that Mr. Clerkin sent which is dated May 12, '65 to officers of parent companies and subsidiaries, subject: "Organization Announcement." This announces Mr. Stewart's position. Would you read that last paragraph, and perhaps you can interpret what the "liaison work" means in that context.

Mr. Ricks: That is Telecable Exhibit 57.

Mr. Lloyd: I will show him the document and record an objection. I don't care to have this witness speculate as to what another individual meant when he wrote a particular [60] document, which is what I understand Mr. Wholl to be asking the witness to do.

Presiding Examiner: Does the use of the words "liaison work" have some special connotation to you, sir?

The Witness: Not really.

By Mr. Wholl:

Q. I now hand you a copy of a document signed by you dated May 18, 1965 to all general telephone operating

company presidents, subject: "Marketing CATV." Mr. Ricks has the citation to the Telecable exhibit number.

Mr. Ricks: Telecable Exhibit 58.

By Mr. Wholl:

Q. This memo requests that the operating companies provide Mr. Stewart with available details of any CATV activities which has come to the operating companies, that all possible information concerning CATV inquiries should be provided to Mr. Stewart before the telephone company conducts any discussions or negotiation concerning provision of CATV service.

Mr. Lloyd: Object. It is precisely what the document says.

Mr. Wholl: Mr. Lloyd, I have to ask the question and have to summarize what it says to ask the next question.

Mr. Lloyd: You do?

Mr. Wholl: Yes, I do.

By Mr. Wholl:

Q. Now, the term "CATV inquiry," does it contemplate [61] inquiries into pole-attachment agreements? A. It could.

Q. Does it also include inquiries as to leased facilities? A. It could.

Q. Was this policy you stated in this memorandum intended to enable the Service Corporation or GT & E Communications to determine whether the particular location that they were notified of would be attractive enough for GT & E Communications to come in and compete for CATV franchise?

Mr. Lloyd: How about "seek a franchise"?

By Mr. Wholl:

Q. Seek a CATV franchise. A. I think it could cover all of those things, yes; I think the intent of this letter was to request the operating companies to gather as much information concerning the CATV opportunities in their

territory and notify Mr. Stewart. Their motives were that if there were a CATV opportunity for Mr. Stewart, there were CATV opportunities for themselves, with possible provision for leased or channel services. They were making him aware of a potential market.

Q. To your knowledge, was Mr. Stewart or yourself informed of the discussions that were taking place with a CATV group headed by Mr. Ives? A. No, sir, I was not.

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[63] Q. I believe that Service Corporation issued a CATV marketing guide in June 1965. A. A guide was issued; I am not sure of the date.

Q. Before the guide was released to the operating companies, did you have occasion to review it and approve it? A. Part of my job at the Service Corporation is to coordinate the activities of all of the staff departments, and there are quite a few. In a broad sense I was made aware by the department heads that they were preparing a marketing guide which would be submitted to the operating companies, but this was in no way different than the other marketing guides that we provide covering other services.

An example is the marketing guide we prepared for the coin development program, pay stations, or speaker-phone product or any number of others. This was not unique, so the fact I was generally aware of the guide being prepared but not intimately acquainted with details.

Q. Did you review it specifically and then approve it? A. I can't remember that I did.

Q. Now, page 7 of the guide provides—

Mr. Lloyd: Wait. Please, let us all proceed together.

Mr. Ricks: Telecable Exhibit 59.1 through 59.46.

Mr. Lloyd: What page are you on?

Mr. Wholl: Page 7. The first paragraph.

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[65] Mr. Lloyd: I don't agree with that characterization. He did not testify that the Service Corporation ever made such a recommendation.

Presiding Examiner: I think what Mr. Wholl is really trying to find out is what underlaid this recommendation.

Mr. Lloyd: That is fine. He may proceed on that line of inquiry.

The Witness: As it says, it is a recommendation, a recommendation of the Service Corporation departments were or was at this time that the operating companies in their opinion should not provide this service directly to the residents. The operating company had the freedom to do as they felt they wanted to. If they elected to do something different, they had autonomy to do it.

By Mr. Wholl:

Q. Mr. Naumowicz points out: What is the underlying reason for that opinion of the company that the telephone operating company should not be directed to produce it to the public? A. It was an opinion. It was our considered opinion we should not, from our operating companies, be providing direct CATV to the public.

Mr. Lloyd: The exhibit you already offered into the record goes into this subject to some extent on the part of a witness more intimately involved in the formulation of that

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[67] number of positions that people hold, I think the contemporary documents rather than the witness's memory are probably going to be the basis of the case.

Mr. Wholl: Mr. Examiner, a document which implies on its face that GTI will not engage in competition for the provision of CATV channel service directly to the public cannot be interpreted on the face of the statement. I think if there is a possibility that the reasons for that policy can be found, that we go into it.

Mr. Ricks: I think, Mr. Wholl, if you ask the witness whether or not they were advised by counsel that they could not do it, I think you will get the right answer.

Mr. Lloyd: I think he might get an objection also.

Presiding Examiner: Mr. Gage, I think the Bureau is trying to get you to acknowledge that you reached a collective decision that was probably unwise to have your CATV operating companies compete directly with your telephone operating companies. Is that a fact?

The Witness: Well, I think from a very practical point of view, Mr. Examiner, it would appear somewhat ridiculous to have two companies, two subsidiaries from the same firm, competing in the same market for the same service.

Presiding Examiner: And was this a factor in formulating the recommendation?

The Witness: It would be one of the factors that would

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[79] Mr. Ricks: The reason is stated in the letter.

Mr. Lloyd: I gather the witness meant the question to mean something in addition to the letter.

The Witness: That is the interpretation I put on it.

By Mr. Wholl:

Q. That is the correct interpretation. Did the service corporation engage in a study to determine whether the figures given by Mr. Britt was an accurate description of the cash flow? A. We have gathered in New York what we consider to be the best talent that the General System has to offer in all areas. One of them certainly is the rate and tariff area. We have some experts there who applied some technique which I am totally unaware of and not competent in.

We are often asked by operating companies to review suggested rates in tariff matters and I would suspect in performance of their regular duties they would.

Q. Did the service corporation come to the conclusion that it was indeed as Mr. Britt intimated, that the tariff was not competitive? A. I believe it would be fair to say that the end-result speaks for itself. A different kind of a filing

was made than the one presently in force at the time Mr. Britt filed his letter, wrote his letter to me.

Q. I take it again the service corporation actively

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[87] By Mr. Wholl:

Q. Were you personally present in any discussions regarding whether the service corporation would recommend that its operating cost allow or disallow pole attachment agreements? A. Yes.

Q. Were you present back in 1965 when it was decided that the provision of CATV channel service was a communications service that should be provided by General System operating companies?

Mr. Lloyd: That question presumes a meeting was held at which that decision was made.

By Mr. Wholl:

Q. If such a meeting was held. A. If such a meeting were held, I suspect I might have been there.

Q. And I would assume that your advice is sought as to whether the General System, rather the service corporation should recommend a particular policy or not?

Mr. Lloyd: What area, CATV?

By Mr. Wholl:

Q. Yes. A. My advice would be sought as well as counsel's of a good many other service corporations.

Q. How many?

Mr. Lloyd: I object. We are ranging far afield. They

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[94] Q. In this he would act independently of your office?

A. I don't understand the question.

Q. Did he have his own staff? A. Yes, he did.

Q. Who makes the final decision when GT&E Communications decides to seek a franchise in a given community? To be more specific, who made the final decision to seek a

franchise in Bloomington-Normal? A. I am not sure I know who made the final decision. I think Bloomington-Normal was a community that appeared to have some potential from a major market point of view.

Q. Well, did a decision or recommendation to seek the franchise in Bloomington-Normal come through your office for your approval? A. I think it was reviewed at the time a good many other GT&E cities were considered, like Durham; Lexington, Kentucky; Fort Wayne, Bloomington—

Q. Do you bear any specific responsibilities to the CATV activities of GT&E Communications of Bloomington-Normal? A. I guess I do. I am an officer of the company.

Q. Mr. Stewart—did he have authority to make a decision that GT&E Communications should seek a franchise? A. Which franchise?

Q. Bloomington-Normal. A. I thought I answered that earlier, Mr. Wholl.

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[98] Q. Are you familiar with a document entitled "Major Market Presentations, Bloomington-Normal, Illinois"? A. Yes.

Q. Let me hand you a copy to refresh your memory. This is identified as TeleCable Exhibit 65, which has been received in evidence. Do you know, Mr. Gage, who prepared this document? A. I believe it was prepared in the Marketing Department, but I am not sure.

Q. Was it reviewed and approved by you? That is prior to its use? A. Not in detail.

Q. You reviewed selected portions of the document? A. There were some broad discussions about the major market program.

Q. These discussions took place among who? Who was present? A. I can't remember, Mr. Wholl. Members of my staff in the New York office.

Q. Mr. Stewart also? A. He might have been there.

Q. There were certain projections found in that document. Can you tell me what they were based on? A. No, I can't.

Q. Now the guide on page 18 indicates three ways by which a CATV system can provide service. One is a wholly owned system,

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 [118] I understand the relationship of the service corp to the operating companies. I am curious, however, to determine how an operating President is assigned. For example, I understand Mr. Walter Wright in 1961 went from the service corp to the President of General of Illinois and later Mr. Rowland went from Vice President of General of Indiana to General of Illinois. Where are these decisions made? A. I don't have much to do with that decision. I think that question should be asked of Mr. Clerkin.

Q. I am asking if you know would you please tell us?
 A. No, sir, I don't.

Q. Is the decision made by a group of officers of GT and E? A. Yes, I suppose it would be.

Q. Let me ask this in a different way. Would you say that the weight to be accorded a recommendation of the service corp would be the weight typically accorded a recommendation of a person who is the owner of the stock of a company? A. I am not sure I understand the question.

Q. You have noted on a number of occasions in your testimony Mr. Gage, that the service corp makes recommendations? A. Right.

Q. I am asking you, sir, if those recommendations would be accorded the weight of the recommendation of a party that owned the stock of the operating company?

[119] Mr. Lloyd: I think that just covers too much ground to be capable of a meaningful answer.

Presiding Examiner: I think what you are trying to get at, Mr. Ricks, is probably not really a question that he could answer.

Mr. Gage, would it be fair to say that the recommendations of the service company is disregarded by an operating company only for sound reasons?

The Witness: Yes, sir.

Presiding Examiner: And if there is no reason to either go along with or go against the recommendation, as a practical matter it would be the policy to go along with the recommendation, is that correct?

The Witness: I think so.

Mr. Ricks: Thank you, Mr. Examiner. You did it far better than I could.

By Mr. Ricks:

Q. Mr. Gage, in the general system do you have a stock sharing plan much like the Bell System?

Mr. Lloyd: Excuse me, Mr. Gage. I don't know what the Bell System plan is and I don't know if the record knows what the Bell System plan is.

By Mr. Ricks:

Q. Let me ask Mr. Gage if the general system has a stock option plan that employees may acquire stock in GT and E Corporation? [120] A. Yes.

Q. Would it be fair to say that a high percentage of the management of both the operating companies and the service corp take advantage of that option?

Mr. Lloyd: Let us get management narrowed down. The overall system has, I think Mr. Clerkin said, 80,000 employees. That covers an awfully lot of ground. A high percentage of what you imagine to be management, Mr. Ricks. I mean in fairness to the witness can we say it extends to officers or what?

Mr. Ricks: I would say I assume in the general system there is a level of employee that is considered a management level. I am considering either the district manager, commercial manager, and the like and I am asking the witness if he knows whether a high percentage of the management of the general systems, usually would take advantage of the stock option plan.

The Witness: I don't know.

Mr. Lloyd: There are some details, Mr. Ricks, in the form 10K, official notice of which is going to be requested.

You might take a look at that and see if there is information along these lines of which you want official notice taken. That might cure any defect you find in the record.

By Mr. Ricks:

Q. The profits of the operating companies including General Telephone of Illinois and GT and E Communications would go into a consolidated return I assume of the CT&E Corporation, [121] would become mixed with all of the profits of the operating company and would be reflected as the profits of the holding company? Is that right? A. I believe that is right.

Q. I would like to direct your attention to the meeting that was held with the NTCA representatives, January 4, 1966, Mr. Gage. You testified previously you were in attendance and your attention was directed to a memorandum prepared by Mr. Myrick of your company. M-y-r-i-c-k. Would you please give the witness a copy of that?

Mr. Lloyd: I give my only copy when you are conducting the examination. The things I do for you when you are conducting the cross-examination, it is incredible. Now can I look over your shoulder while you consult your copy?

By Mr. Ricks:

Q. Would it be fair to say, Mr. Gage, that one of the concerns expressed by the representatives of CATV Association was that your company or the general companies might withhold pole attachment agreement completely from CATV companies? A. That may have come up, sir. I am sorry, I can't remember.

Q. The notes reflect it, do they not?

Mr. Lloyd: Where, Mr. Ricks? If they do shouldn't we let the document speak for itself?

By Mr. Ricks:

Q. Perhaps I can help along here somewhat, Mr. Gage. [122] You are involved in your duties both with GT and

E and G'Tec as Vice President in charge of Telephone Installation of the Operating Company, involved in literally hundreds of decisions I assume every day. Would you agree that this document probably reflects accurately what transpired in the meeting of January 4, 1966? Do you have any recollection of anything different from what is reflected here? A. Not at this point in time, that is right.

Q. The document indicates that representations were made on behalf of the General system, pole attachment agreements would be offered to CATV systems but that General System would encourage the lease back offerings. Representations were also made in behalf of the General System that GT and E Communications was going to be an applicant for CATV franchises but that the general operating companies would treat GT and E Communications like any other applicant. Do you remember that, Mr. Gage? Do you believe that is fairly accurate? A. I believe that is right, sir.

Q. The document of the meeting also shows that CATV operators were experiencing delays in getting pole attachment agreements from general operating companies and the representation was made that recommendations would be given to the operating companies to try to alleviate this delay problem.

That was not a question, Mr. Gage, I will go into the next question. You have testified about the major market program

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[125] By Mr. Ricks:

Q. Could you tell us, Mr. Gage, something about the major market program that was discussed among the officers of GT and E Communications?

Mr. Lloyd: Now, please, I think that is a bit broad. Mr. Ricks does have some duty to formulate questions and elicit answers.

By Mr. Ricks:

Q. What is the major market program, Mr. Gage? A. The major market program is a program to develop what we classify as a major market, CATV market.

Q. And contained in the major market presentation were the major cities of Lexington, Kentucky; Durham, North Carolina; North Wayne, Indiana; Erie, Pennsylvania? A. They could have been.

Q. Well, they are, Mr. Gage. We might as well get them on the record.

Mr. Lloyd: Well, that document has been received in evidence.

By Mr. Ricks:

Q. Mr. Gage, do you know whether or not each of the markets contained in the major market presentation are served by General Telephone Company? A. Each of those you listed? Is there a list?

Q. On page 65.12, I believe it would be page 11 of the document. [126] A. Yes, sir, they are.

Q. The document recites at the top of that page "The primary area of emphasis to pursue the most promising opportunities for cable TV within the General System operating areas." A. Right, sir.

Q. Going, Mr. Gage, to the last three pages of this document, the last two, in Exhibit 65.26, it indicates that the major market program has been reviewed and approved by GT and E Service Corp management and by Mr. Clerkin. Then the document goes on and recommends three action steps on the part of the local operating telephone company, in this case General Telephone Company of Illinois. Are you familiar with those action steps?

Mr. Lloyd: I am sorry, I do not like to interrupt you but are you asking him if he has any knowledge of those over and above what is in the document?

Mr. Ricks: No, I am not. That is all I want to know.

Mr. Lloyd: The document shows what it shows and it

has been received in evidence. That is why I am having difficulty understanding what you are driving at.

By Mr. Ricks:

Q. Mr. Gage, do you feel these three action steps are consistent with the representations contained in the report of your 1966 meeting with NCTA? A. Yes, I do.

Q. Do you feel that a total commitment must be made

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[128] Presiding Examiner: Is it really going to add a great deal to have Mr. Gage evaluate the evidence, Mr. Ricks?

Mr. Ricks: Mr. Examiner, I think that it has been difficult in this case to pin down responsibility. I think that the inference to be drawn as to what is meant by a total commitment can only be judged in light of whose name is on the document and what is his power in the General System. When it says a total commitment must be made on behalf of the General System you have to realize that all of the companies in effect are working for the same holding company.

Presiding Examiner: I understand your point sir, but this is a decision which it seems to me the Commission must make in deciding the case and it is not going to be assisted greatly by having Mr. Gage evaluate apparent conflicts. I must sustain the objection.

By Mr. Ricks:

Q. This document, Mr. Gage, was also utilized in the other communities, Major Market communities, was it not?

Mr. Lloyd: I object. We are concerned with what happened in Bloomington and Normal and not in other communities.

Presiding Examiner: Sustained.

Mr. Ricks: Would you give the witness Exhibit 58, Mr. Lloyd?

Mr. Lloyd: Yes.

By Mr. Ricks:

Q. You testified earlier to Mr. Wholl regarding the last [129] sentence of the second paragraph that the reason that the operating companies were encouraged to transmit information to Mr. Stewart concerning CATV inquiries was to obtain information on potential markets. Is that right?

A. Yes, sir.

Q. Would it be proper to assume that on the basis of that information G'Tec would analyze the market to determine whether it should file an application? A. Yes, sir.

Q. Do you feel that this is a proper function for a common carrier that is engaged in the offering of channel service offerings to communicate inquiries about that channel service offering to an affiliated company which may then compete with the potential customer?

Mr. Lloyd: I object.

Presiding Examiner: I will sustain the objection.

By Mr. Ricks:

Q. In the Bloomington and Normal market, Mr. Gage, was a study conducted of the economic feasibility of constructing a system that was not a lease-back offering but a system that would utilize utility poles prior to the filing of your application in that community? A. There may have been.

Q. Are you aware of it? A. I am now aware of it.

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[134] By Mr. Ricks:

Q. You said a moment ago, Mr. Ricks, that you assumed a study of comparative cost was made with respect to Bloomington-Normal. Do you know that for a fact? A. No, sir, I do not.

Q. It may well be that a study was not made? A. It could be.

Q. It may well be that the policy of the major market was simply to go for a channel service offering without regard to the economics, isn't that correct? A. No, sir.

Q. Then would you correct me on it? A. To the best of my knowledge the major market program and effort was a program conceived to interest G'Tec and the common carrier in the major market potential offering CATV within certain given areas.

Q. And to make it attractive for the operating companies G'Tec would take a tariff offering from them, is that right? A. The operating companies, whether it be G'Tec or any other common carrier for that matter, are interested in the lease of facilities. That was the thrust of the effort in so far as the major market program is concerned as it relates to the common carrier.

Q. That is why your policy was that G'Tec would take a channel service offering in the General System area?

[135] Mr. Lloyd: That has been stated to have been the policy quite often.

By Mr. Ricks:

Q. How can you say, Mr. Gage, it was the most economical way in Bloomington-Normal if you are not certain that any study was made of the economics? A. Mr. Ricks, as I have mentioned before, I relied on Mr. Stewart and his staff to handle the day to day business. You must understand that I have a good many other duties to perform. The decision was made to enter a major market. Insofar as G'Tec was concerned it was on the basis of the potentially profitable operation.

Q. But you don't know of your own knowledge whether the lease-back offering in Bloomington-Normal was the most economical method? You are just assuming that? A. At the moment I have no way of comparing the two.

Q. What was your understanding, Mr. Gage, of the Commission's so called 214 holding in the General Telephone of California case with respect to General Telephone of Illinois' legal ability to build a CATV facility in Bloomington, Illinois?

Mr. Lloyd: Now I object to that question. I don't think we want this layman giving his views of what an FCC decision means.

Mr. Ricks: I will be more specific.

Mr. Lloyd: I object to that question.

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[140] By Mr. Ricks:

Q. You are somewhat familiar with the tariffs, are you not? A. I know they exist and I know that we offer services under tariffs, yes, sir.

Q. Would it be fair to say, Mr. Gage, that the difference between the 1965 tariff and the 1966 tariff is the sliding scale based on the number of patrons per mile rather than a charge per quarter mile of facility?

Mr. Lloyd: I would object. I would be more comfortable if we allowed the documents to speak for themselves. I think we would have a cleaner record.

Presiding Examiner: Is there any reason why they can't speak for themselves?

Mr. Ricks: I think only on the question of intent, Mr. Examiner.

Mr. Lloyd: You have the documents.

Presiding Examiner: I will sustain the objection to the question as phrased. If you think Mr. Gage has some knowledge of intent perhaps a direct question would elicit it.

By Mr. Ricks:

Q. Mr. Gage, you have testified before regarding the statement of General System pole attachment policy as contained in the report of the January 1966 meeting with the NCTA representatives in the January 3rd memorandum to operating companies [141] from Mr. Clerkin. As I recall it, the General System as of that date was agreeable to offering or was recommending that operating companies offer the channel service offering or alternatively a pole attachment agreement?

That is correct, is it not? A. Yes.

Q. Then going to what is Exhibit 33, Telecable Exhibit 33, on February 5, 1962, your policy had changed, had it not?

Mr. Lloyd: Just a minute. Let me get the document before him, Mr. Ricks.

The Witness: Yes, sir.

[142] By Mr. Ricks:

Q. Can you tell us why you changed your policy? A. Well, policy is something that changes from time to time. As I have said a number of times here today, the General System was interested in offering channel services on a tariff basis for they considered those to be common carrier-provided services.

We are not in the full leasing business.

Q. But you offered in 1966 to lease poles? A. I believe that is what the record says.

Q. Mr. Gage, there must be some reason for a change in policy. You knew that to the CATV industry this was an extremely significant change in policy. In fact, the letter indicates you went so far as to get advice from counsel as to whether or not your change in policy would be violative of antitrust law.

Mr. Lloyd: What letter? You mean this memorandum here?

Mr. Ricks: Yes.

Mr. Lloyd: Is that a question?

Mr. Ricks: I am asking him why he changed the policy.

Mr. Lloyd: Would you read the last statement back?

Presiding Examiner: The latter statement was a clarification of a question that had been asked earlier.

By Mr. Ricks:

Q. Why did you change the policy as it existed in 1966 from offering to lease pole space to CATV operators to a policy [143] of recommending at least that operating companies not lease space on their poles to CATV companies?

A. Well, as I have mentioned a couple of times, it is the considered opinion of those of us in New York, Service Corporation, if you will, that we were interested in the leasing of channel facilities, we were not interested in the leasing of poles for any number of reasons beyond the fact that we are common carriers.

We are interested in channel facilities for not only the CATV service, but additional services as they may come along. There are safety hazards involved in having third parties on poles. There are problems in long-range planning.

Our outside plant is designed to accommodate basically the power company and the common carrier. No allowances have been made for third-party attachments.

Q. You would not permit G-Tech to take action that was detrimental to an operating telephone company, would you, Mr. Gage, as an officer of G-Tech? A. Not knowingly, sir.

Q. Are you aware that G-Tech is claiming to contact over 1100 poles in Bloomington, Illinois, which are jointly used by General Telephone of Illinois— A. I am aware of G-Tech contacting a certain number of poles owned by Illinois Power.

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[145] as any other CATV system's cables would have, would it not? A. I don't know, sir.

Q. Mr. Gage, in a document that was filed with the Bloomington City Council—it was the presentation by GT&E Communications—it attached some material relating to the parent company. In one portion of it there is a statement attributed to Leslie Warner, the president of your company, and he is talking about CATV operations and why General Telephone is in them.

I would just like to read a very short paragraph and then I will ask you a question.

“While fully aware of the huge investment involved and the inevitability of loss operations at the start, Gen-

eral Telephone considers CATV one of the bright hopes of the years to come," and here again Warner stakes out a claim, quoting Mr. Warner, "We feel that whatever types of services will someday be provided by coaxial cable networks ought to be provided by us."

Now, Mr. Gage, would that statement to the best of your personal knowledge accurately reflect the so-called "major market program" of G-Tech, one of the reasons why there is a major market program?

Again let me put it this way, because the Examiner has limited many of the questions to Bloomington-Normal. Would this statement be relevant to G-Tech's participation in Bloomington- [146] Normal?

Mr. Lloyd: I am going to object. I can't follow the question, quite frankly.

Presiding Examiner: Can you follow the question, Mr. Gage?

The Witness: No, sir, I am sorry. I can't follow it.

By Mr. Ricks:

Q. Mr. Warner stated to this reporter in relation to CATV, "We feel that whatever types of services will someday be provided by coaxial cable networks ought to be provided by us. "

I ask you, sir, if that statement accurately reflects System's policy in obtaining a CATV franchise in Bloomington-Normal? A. It reflects a corporate philosophy.

Q. Were you a party to the decision to contact power company poles in Bloomington-Normal? A. I was aware of the delays that we felt our GTE Telephone Co. of Illinois would expect as a result of the 214 problem and participated with members of G-Tech in discussions, which led to their contacting the power company to see if other arrangements could be made to contact their poles, yes.

Q. When was this approximately, do you recall? A. No, I don't, I am sorry.

Q. I assume this was after G-Tech had a franchise?
 A. I would have to assume so, because it was at that point I believe that the 214 issue ran into delays.

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 [160] Mr. Lloyd: All right. I have nothing in addition in the way of preliminary matters.

Presiding Examiner: Mr. Ricks?

Mr. Ricks: Mr. Examiner, I would like to hand the reporter TeleCable exhibits and ask they be marked for identification. I have noted them as TeleCable Exhibits 135.1 thru 135.42. This is the deposition of Walter Wright. I did not have the copies yesterday.

Presiding Examiner: All right, you have that identification.

(The document referred to was marked for identification as TeleCable Exhibit No. 135.)

Mr. Ricks: I would ask it be admitted into evidence.

Presiding Examiner: Any problems, gentlemen?

Mr. Wholl: No.

Presiding Examiner: They are received.

(The document heretofore marked for identification as TeleCable Exhibit No. 135 was received in evidence.)

Mr. Ricks: I have nothing else, I am sorry, Mr. Examiner.

Mr. Wholl: Mr. Examiner, we would like to call Mr. William C. Rowland to the stand.

Mr. Lloyd: Excuse me, we are in the middle of my case and [161] I want the record to show we brought Mr. Rowland here voluntarily and pursuant to agreement among counsel that at this point we would put Mr. Rowland on with the idea of getting him out of town today. All right,—

Presiding Examiner: Well, that is fine. I thought that was what Mr. Wholl wanted to do.

Mr. Lloyd: I want the record to show that, you know, my case is being interrupted so this one witness could be put

on the stand. He was brought here voluntarily, not under subpoena.

Presiding Examiner: All right, Mr. Rowland, will you take the stand, please?

Whereupon,

William C. Rowland

was called as a witness and, after being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Wholl:

Q. Will you state your name and occupation for the record? A. William C. Rowland. I am President of General Telephone Co. of Illinois.

Q. How long have you held that position with the General Telephone Co. of Illinois? A. Since September 1, '67.

Q. Prior to that position, did you have any relationship with the General System? [162] A. Yes, prior to that I was Operating Vice President for the General Telephone Co. of Illinois.

Q. Mr. Rowland, do you know how the decision was made and who made the decision to move you from Operating Vice President of the Indiana Co. to President of the Illinois Co.?

Mr. Lloyd: I object. Personnel policy is not in issue.

Presiding Examiner: This is what Mr. Wholl was trying to get at yesterday. I think it would be helpful to the Commission to know this.

The Witness: No, I am not aware of the manner in which the selections are made.

By Mr. Wholl:

Q. How did you receive word, Mr. Rowland, that you were named as President of the Illinois Co.?

Mr. Lloyd: I want to voice an objection and a continuing objection if it is your intention by your ruling to permit

this to go on. I just want the record to be clear as to my position as to this.

Presiding Examiner: I think Mr. Wholl is trying to find out who in this conglomeration of corporations actually has the power to make top-level executive decisions.

Mr. Lloyd: Mr. Wholl introduced into the record yesterday the deposition testimony of Mr. Clerkin. Mr. Clerkin testified on that deposition, for example, that roughly 25 percent of the time was spent on personnel matters and how he works with his [163] Vice President on Personnel in selecting the best talent that there are available for the particular position.

As far as I am concerned, that is an authoritative statement of how this is arrived at.

Mr. Ricks: Maybe we could enter into a stipulation on it in some way. I think the record ought to be clear on it, too, Mr. Naumowicz.

Mr. Lloyd: I think the record is clear on it. Again, I think it comes down to the best use you make of the particular witness. Mr. Rowland, for example, and I am not—he was on a deposition for approximately four hours and I assume we are going back over the same ground, but the man that really knows, Mr. Clerkin, had testimony on this point.

That is my position.

Presiding Examiner: Well, I think one of the problems may be that, Mr. Wholl, you seem to be asking in terms of authority to make decisions and you seem to be getting answers that that is shared, that a lot of people look to a lot of other people and arrive at a decision through that process and perhaps if the questions were termed in terms of responsibility, the question might be answered more easily.

Mr. Wholl: I believe he indicated in a prior answer he did not know how that decision was arrived at and who made the decision. What I am looking for now is how he became aware that he was named President of the Illinois Co.

[164] Presiding Examiner: I see. I understand what you are following, but I hoped we could short-circuit it to save time.

Mr. Wholl: If Mr. Lloyd wants to stipulate for the record, that the holding company, General Telephone and Electronics Corporation, assumes full responsibility for the movement of top-level personnel among the operating companies in the system, I will accept that stipulation in lieu of Mr. Rowland's answer.

Mr. Lloyd: Mr. Wholl, did you read the exhibit you introduced into the record yesterday and Mr. Clerkin's testimony?

Mr. Wholl: Yes.

Mr. Lloyd: You know I am not going to stipulate.

Mr. Wholl: I think he can answer the question.

Presiding Examiner: Let's make a try again. Can you give us a stipulation along the lines as to what you understand the facts to be and perhaps Mr. Wholl can go along with that?

Mr. Lloyd: Mr. Examiner, did the Common Carrier Bureau provide you with a copy of the exhibit that was introduced yesterday, the deposition of Mr. Clerkin?

Presiding Examiner: If they did, my secretary didn't pass it along.

Mr. Wholl: We provided you with a copy, Mr. Naumowicz.

Mr. Lloyd: Well, in that deposition, Mr. Johnson asked Mr. Clerkin, you know, Mr. Johnson, I think all of the people being exposed to the telephone company for the first time were somewhat surprised about the movement of people from one company to [165] another and Mr. Johnson got into this and Mr. Clerkin proceeded to explain.

I think it was in clear and precise terms how decisions such as this are arrived at. I would like to direct your attention to the information appearing on page 70 and thereafter.

Actually, the examination starts at page 69. I would point out for the record, so it will be clear, that on page 71

the first line there is reference to "Mr. Skee" of the Service Corporation.

Rarely do I blame anything on a reporter, but I do believe this was a reporter's error and it should be Mr. Steele, who is Vice President for Personnel.

Mr. Wholl: I would note, after reading this, Mr. Examiner, that Mr. Clerkin's testimony here relates to employees. There is no mention here as to vice president or vice president of a telephone company.

Mr. Ricks: I can't understand, Mr. Naumowicz, why Mr. Lloyd would not accept the stipulation offered by Mr. Wholl.

Mr. Lloyd: I only stipulate to facts, Mr. Ricks, which is a short answer to the question.

Mr. Wholl: Why don't you put the fact on the record as to how Mr. Rowland found out he was named as President of the Illinois Co.?

Mr. Lloyd: If Examiner will rule on the question and I voiced an objection, which I am entitled to do,—

[166] Presiding Examiner: It seems to me the process which is employed, but perhaps I am presuming knowledge which I don't possess. I will let Mr. Wholl go a little further in the area.

Mr. Lloyd: The question pending is how you found out about your appointment, I think.

The Witness: I guess I would have to culminate it in a discussion with Mr. Clerkin. Certainly, it was no surprise to me; it had been over a period of time.

By Mr. Wholl:

Q. Who informed you? A. Mr. Clerkin.

Q. Do you make a decision, Mr. Rowland, as to whom your Operating Vice President will be in the General Telephone Co. of Illinois? A. Yes, I have the ultimate decision.

Mr. Lloyd: Just a moment, keep your voice up, Mr. Rowland, and don't trail off at the end of the sentence, because the reporter is trying to get what you say, please.

By Mr. Wholl:

Q. Is your decision cleared with Mr. Clerkin at the Service Corporation? A. Here, again, it is part of the process of screening personnel and determining the most logical candidate and the ultimate selection is up to the President.

Q. Are you influenced in any way by Mr. Clerkin's [167] recommendation that this man may not be the most acceptable for the purpose of your company?

Mr. Lloyd: That presumes such a recommendation is made and I think we ought to take it a step at a time.

Presiding Examiner: Sustained.

By Mr. Wholl:

Q. Have you had occasions to recommend the employment or promotion of an individual in your company to Mr. Clerkin for his approval? A. Here, again, we are talking about a personnel process which involved coordination of people within my company and the Service Corporation and other companies within the system and we are continually developing personnel for movement through the organization.

We are constantly recommending people whether or not there is a vacancy.

Q. I see. Has a situation ever arisen where one of your recommendations was disapproved by the Service Corporation? A. I can't recall in the light of your question of any specific recommendation not being accepted.

Q. Would you give great weight to Mr. Clerkin's judgment as to the capabilities of an individual that you recommended?

Mr. Lloyd: I don't understand the question. May I have it read back?

Presiding Examiner: I think you misspoke yourself, Mr. Wholl.

[168] Mr. Lloyd: He must have.

Presiding Examiner: Rephrase it please.

By Mr. Wholl:

Q. Would you give great weight to Mr. Clerkin's suggestions that a person who you recommended was not proper for the job? A. Well, if—

Mr. Lloyd: I would like to know preliminarily if such a situation has arisen. If it has not, we are in a speculative area.

Presiding Examiner: I think Mr. Rowland told us a moment ago he couldn't recall.

Mr. Lloyd: That was my recollection, too, so I object.

Presiding Examiner: This is a hypothetical question.

Mr. Wholl: I believe in some of your rulings yesterday, Mr. Naumowicz, you went into the question of policy recommendations of the Service Corporation and absence of any logical reason on the part of the telephone company, would they normally follow those recommendations, and I believe you received an affirmative answer from Mr. Gage.

I think in the context of this statement, it is also relevant to determine whether a president of an operating company will give substantial weight to a recommendation of the Service Corporation, which is indeed in the position to make those recommendations.

* * * * *

[170] Q. With CATV operators? A. Generally speaking.

Q. And that is regardless of affiliation?

Mr. Lloyd: You mean corporate ownership affiliation, Mr. Wholl?

By Mr. Wholl:

Q. Yes. A. Yes.

Q. Was this policy in effect when you assumed the duties of President of the General Telephone Co. of Illinois? A. I don't know.

Q. What reasoning underlies the present Illinois Co. policy with respect to poleline attachment agreements with CATV operators? A. I will have to develop that a little

bit in order to give you a complete answer. It is my position that we are in the communicating business and as such are attempting to market channel services, and in marketing these services we offer them to CATV operators or potential operators.

In the marketing of a channel service, it makes it inconsistent in my view to offer pole attachment privileges to CATV operators or a potential CATV operator.

Q. Do you consider a CATV operator to be a competitor of the telephone company? A. Well, in the sense that I believe we should be offering [171] the service as part of a total communications package and that they conceivably are offering the same service, then I guess you would have to say we are a competitor.

Q. Does the General Telephone Co. of Illinois provide communication services to the Cities of Bloomington and Normal under a franchise from those cities that permits the telephone company to use certain locations for the placing of poles and other equipment that is necessary for supply of the communication service that you do provide? A. I can't speak specifically to the ordinance, but generally speaking, we do operate under the approval of the municipality.

Q. To your knowledge, Mr. Rowland, does this franchise giving the Illinois Co. the privilege of using the public domain for the placing of poles and other equipment require that the facilities be employed in the public interest and in a nondiscriminatory manner?

Mr. Lloyd: Excuse me, but I object. In the context of the first question, he confessed a lack of any precise knowledge. I don't see what purpose is served in them getting into details of a document he does not know about.

Presiding Examiner: I think that is right, but, Mr. Lloyd, I am sure you can have your local counsel out there check it out and give Mr. Wholl an answer.

Mr. Lloyd: Sure.

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[176] Illinois Co., was there anything to prevent General Telephone Co. of Illinois from seeking a CATV franchise in Bloomington and Normal? A. I know of nothing other than that we are not in the CATV business.

Q. Was it ever considered since you became President?

A. I never considered it.

Q. If an independent CATV operator, such as TeleCable or the Bloomington-Normal-Perfect Picture Company, should obtain a franchise and then did not lease CATV channel facilities from General Telephone Co. of Illinois, would the telephone company be losing any communication service that it now provides? A. If I understand your question, the answer is obviously "no."

Q. Would the entry of an independent CATV operator, which desires to provide service to subscribers in the community, be competitive with a service offering by General Telephone Co. of Illinois?

Mr. Lloyd: I object. The question has been asked and answered in a slightly different fashion.

Mr. Wholl: No, it has not, Mr. Examiner.

Mr. Lloyd: Mr. Wholl, I was speaking—

Mr. Wholl: I thought you were through.

Mr. Lloyd: If you did, my apologies. Go ahead.

Presiding Examiner: May I have the question please?

[177] (The reporter read the question.)

Mr. Lloyd: The question was asked before, Mr. Naumowicz, "Do you consider CATV to be a service competitive to" and now you can ask the same question in several fashions. I submit this is the same question.

Presiding Examiner: Isn't it, Mr. Wholl?

Mr. Wholl: No, there is a distinction between providing channel facilities, hard equipment, and providing a CATV service directly to a customer.

Mr. Lloyd: Agreed.

Mr. Wholl: Now, Mr. Rowland has indicated he considers the CATV operator a competitor for ownership of the facil-

ity. The question is, does he consider a CATV operator a competitor for service to the public—

Mr. Lloyd: There is no—well, I just want the record to note I don't think Mr. Rowland either said or intended to say what has just been attributed to him by Mr. Wholl and I have so much confidence in that I will rely on the record to bear my statement out.

Presiding Examiner: Mr. Rowland, excuse me, to the extent you want to be in any aspect of the CATV business, anybody else in the CATV business would be a competitor, right?

The Witness: Unless they were availing themselves of our services, which I couldn't get out of Mr. Wholl's question.

Mr. Wholl: I don't think he answered the question.

[178] Presiding Examiner: Are you asking him to define "public interest"?

Mr. Wholl: No, sir, asking him whether he considers a CATV operator who provides a service to the public to pick up a channel off the air, you give that channel to a subscriber, who pays the CATV operator a fee for it, and if—or does Mr. Rowland consider that that service is competitive to a service that the telephone company provides?

Mr. Lloyd: Well, then I object for a different ground, because this is the type of question that is a question of law, whether it is competitive or not competitive, and I don't think Mr. Rowland's views in this particular instance are—

Mr. Wholl: It is not a question of law.

Mr. Lloyd: I don't know much about it, but I heard the Courts spend a lot of time to determine relevant lines of commerce and where you have competition and where you don't.

Mr. Wholl: It is also a factual matter, isn't it?

Presiding Examiner: Mr. Rowland, do you think you can answer?

The Witness: I will try.

Presiding Examiner: Go ahead.

The Witness: In the hypothetical case you speak of, there is a possibility that that CATV operator is availing himself of the telephone company channel service.

The fact he is providing a CATV service in itself is not [179] the competitive aspect I referred to. If I may continue, if they provide their own cable facilities and carry the channel signals, that is the competitive aspect that I referred to.

If they are doing it versus us, but providing a service, that is their function.

By Mr. Wholl:

Q. Would you expect any loss of revenues to the General Telephone Co. of Illinois in respect of a CATV operator furnishing service directly to a subscriber? A. Without availing themselves of our services?

Q. Yes, without availing themselves of—

Mr. Lloyd: May I have the question read back?

(The reporter read the question.)

Mr. Lloyd: All right.

The Witness: I look at this in the light of the viable business operating with the intention of growing and developing in the future, whatever that future may be. And if in the nature of your question it intends to refer to a loss of future revenue, a loss of future opportunities, then I would say "yes."

By Mr. Wholl:

Q. Do you consider that the rates charged by General Telephone Co. of Illinois for pole attachment space compensatory to the telephone company?

Mr. Lloyd: This is under the old contract they have presently outstanding, Mr. Wholl?

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[185] Q. Has the Illinois Co. recently investigated whether the rates for pole attachments were compensatory or not?

A. I don't know.

Q. So we can clarify the record in light of Mr. Lloyd's objection—

Mr. Lloyd: I made several. Which one?

Mr. Wholl: Concerning my characterization of Mr. Rowland's testimony.

Presiding Examiner: There were several of those, too, Mr. Wholl.

By Mr. Wholl:

Q. Is it General Telephone Co. of Illinois' desire to control the use of the facilities over which CATV service is supplied? A. General Telephone Co. of Illinois desires to provide the communication service in this operating area—

Q. Does General Telephone Co. of Illinois desire to control the use of the facilities over which CATV service is supplied?

Mr. Lloyd: I submit it has been asked and answered.

Presiding Examiner: There is a somewhat broader question there. I am going to overrule that objection.

The Witness: You would have to, I think, go a little further and outline to me what you mean by "control."

[186] Mr. Lloyd: Excuse me, respectfully, as to your question, I think also you have to have an assumption there "who owns the particular facilities involved." That is in fairness to the witness.

By Mr. Wholl:

Q. When you construct CATV channel service facilities, does General Telephone Co. of Illinois own those facilities?

A. Yes.

Q. Is it the policy of General Telephone Co. of Illinois to maintain the ownership of the facilities over which CATV service is supplied? A. It is the policy of the company to own the facilities over which it supplies these services, if that is what you are asking.

Q. Is your policy of not entering into pole attachment agreements with CATV operators—would that policy have the effect of restricting a CATV operator's choice of the alternatives in providing CATV service to his customers?

A. I think the CATV operator would have to answer that. Insofar as we are concerned, we are aggressively marketing a service which we offer. What the alternatives of the customer are, they are probably many and I wouldn't want to speculate on them.

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[207] A. I don't know.

Q. In constructing its system, did GT & E Communications request from General Telephone Company of Illinois permission to temporarily violate telephone company space on certain utility poles in Bloomington and Normal area?

A. I am aware there were discussions on this subject. I don't know whether it was between the telephone company and the power company or—or who was involved. I did not participate in the discussions.

Q. Do you know whether it was indicated to GT & E Communications, Inc., that such permission would be granted?

A. If I recollect the issue, it seems to me that it was decided that any temporary attachments would be permitted for the convenience of both the power and CATV. I don't know specifically.

Q. Perhaps we can clarify one document that may not speak for itself. I hand you a copy of TeleCable Exhibit 54, with particular reference to the second paragraph.

Mr. Lloyd: What portion did you direct attention to?

Mr. Wholl: Second paragraph. I will read it in.

Mr. Lloyd: You don't have to. It is in the record.

Mr. Wholl: So we have clarification, may I read this portion.

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[213] Mr. Lloyd: I am referring to the second question, containing the phrase "request"—

By Mr. Wholl:

Q. Did Mr. Ives and Mr. Merwin or Mr. Hayes ever request a pole-attachment agreement with the Illinois company? A. I am sure they communicated that desire to me in one fashion or another.

Q. Can you characterize your response to their request as being either to discourage a pole attachment or a flat, outright statement that you would not enter into a pole-attachment agreement? A. My objective was to encourage a channel-services agreement.

Q. No; you only discouraged their request for a pole-line-attachment agreement or did you tell them flatly—Mr. Ives, Mr. Merwin, Mr. Hayes—General Telephone Company of Illinois will not enter into a pole-line-attachment agreement? A. I think those gentlemen will have to answer as to how they interpreted what I said, but the whole conversation in meetings were intended to encourage the channel-service agreement.

Q. You did have occasion during the meetings to discuss the company's policy with respect to pole-line-attachment agreement? A. Yes, and I did not encourage them.

[214] Q. With respect to the statements regarding pole-line-attachment agreement, to the best of your knowledge, what language did you use? A. I don't recall the words, but if I wanted to relate it to you, I would say I was not interested.

Q. You were not interested? A. No, because I was attempting to sell the other service.

Q. Was it conceivable that when these gentlemen walked out of your office after your meeting, you walked out of their office, that they could still reasonably hope that a pole-attachment agreement could be obtained in the future?

Mr. Lloyd: I think that is—

Presiding Examiner: I will sustain the objection.

Mr. Rowland, you are telling us there are quite a number of ways of saying "No"?

The Witness: Yes; some are more diplomatic than others.

By Mr. Wholl:

Q. The meetings you had with Messrs. Hayes, Merwin, and Ives, do you recall giving any specific reasons for your policy of not entering into pole-attachment agreements?

A. I am sure we did get into that discussion. The reason it is difficult for me to specifically relate that conversation, that subject of the conversation into a meeting, encompasses a little broader area than just pole-line

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[216] Q. At this meeting with the Perfect Picture group, did the Perfect Picture group evidence their displeasure at the attempt by GT & E Communications to secure the franchise of Bloomington and Normal? A. Yes, I am sure that was part of the discussion.

Q. Did they indicate to you at that time that they believed this was contrary to an understanding they had reached with Mr. Walter Wright? A. Yes, I am sure that that was part of the discussion.

Q. As represented to you—now let's just clarify the record. Mr. Wright was president of the Illinois company prior to your assuming the position? A. Yes, he was.

Q. And he is now a director of the Illinois company? A. Yes. He was a director then.

Q. He was a director then also? A. Yes.

Q. As represented to you by Perfect Picture group, what was the nature of the understanding reached with Mr. Wright?

Mr. Lloyd: I think that calls for a patent hearsay.

Mr. Wholl: I think although it is hearsay, it is very relevant to decide or to explain the future course of action taken by Mr. Rowland, and we will be getting to that very

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[223] not intend to violate any commitment. On the other hand, we were interested in protecting our interests, and in view of the entrance of other companies into the competi-

tion, G-Tech's action was justified. I also reminded them that they had not committed themselves to leasing telephone facilities and therefore we felt any prior commitments we may have made were no longer valid. I assured them if they were interested in leasing telephone company facilities, I would discuss with you the possibility of G-Tech's withdrawing from the competition. They were still not in a position to agree to leasing telephone facilities and will give us a decision on that sometime next week."

Did I miss a word in there?

(Discussion off the record.)

Mr. Lloyd: The error is harmless, but the manner in which he read it into the record deviates slightly from the document itself.

By Mr. Wholl:

Q. Now, I am particularly interested in your statement "We were interested in protecting our interests." Can you tell me what interest you were talking about there, Mr. Rowland? A. It would be many interests. If we go back, I believe, to the initial misunderstanding and the feeling that Mr. Merwin had that we had violated a commitment. I think also in this discussion, it was pointed out that possibly there had [224] been an instance where the group of Ives, Merwin, and Hayes—I guess we should be calling them "Perfect Picture"—had voluntarily or involuntarily associated themselves with the telephone company and it had been brought out in a newspaper article.

I think the point was that the misunderstanding that existed was probably the result of actions by both parties, and I don't know specifically—well, the question I would have in my mind here is what I meant by "our."

Q. Yes; I have the same question in my mind. A. Do you want me to go on?

Q. Yes. A. If the all-inclusive "our" would include the general system, it has one connotation, and if it does not, it has another.

Presiding Examiner: You don't remember now?

The Witness: No, but I would guess from the verbiage here it probably reflected the system.

By Mr. Wholl:

Q. If that is true, what would be the interest of the general system in the context of this use of the word "our?"

A. Again, going back to my basic business philosophy of providing the communication service, we were interested in providing these channel services, and we, as a telephone company, didn't care who purchased them from us, but certainly, if, in

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[244] Now in making the determination of how the facilities should be constructed by you or an independent contractor, was the Illinois Co. influenced by the possibility G-Tech having to build its own system? A. I could only answer to the best of my knowledge and I don't believe it was. It seems to me how the job was to be done would be dependent upon the circumstances at the time the need arose and whether we could do it or had the contract, it seems to me, is immaterial.

Q. Did the Illinois Co. ever consider the possibility in engaging Jerrold Electronics to construct the channel facilities in Bloomington, Illinois? A. I really was not involved in it. I wouldn't doubt there was some consideration. If they considered contracting, Jerrold certainly would be a logical contractor.

[245] Q. I will hand you a copy of TeleCable Exhibit 96 and ask you, please, to review, if you can review the whole thing. But I would direct your attention to several portions of the document.

Now, this memorandum for Tingley Cox discusses the advantages of having Jerrold Corporation construct the system. Mr. Tingley Cox states at one point: "We have no experience in CATV installation and maintenance. Due to the critical timing on this project, it would be advan-

tageous to have experience available to assist in different rent situations"—excuse me —"in difficult situation."

I believe the last paragraph of that memo indicates: "This recommendation," to clarify the record—"The recommendation to approach Jerrold is based on the timing, the experience factor, the guarantee, the price, and the possibility of having to turn the project over to G-Tech."

Now were you aware of these discussions among your subordinates concerning the construction of the system?

A. No, not specifically, but I am not surprised that they have given us this thought. This is what I would expect them to do.

Q. Now, I would like to know, you say this is something you would expect them to do. Why would you expect a recommendation by your subordinates dealing with a CATV situation in Bloomington and Normal, to recommend that rather than having the [246] telephone company construct the facilities approach an independent contractor, because of the possibility of having to turn the project over to G-Tech?

Mr. Lloyd: I don't think he testified to that at all and neither do you, Mr. Wholl.

Mr. Wholl: Are you telling me what I think he testified to?

Mr. Lloyd: He testified he would expect the people who give him the matter reflected by that memorandum and that is all he said.

Mr. Wholl: Would you repeat Mr. Rowland's answer to the last question?

(The reporter read the answer.)

By Mr. Wholl:

Q. Would you have expected your people to make a recommendation that a contract be awarded to Jerrold because of the possibility of having to turn the job over to G-Tech?

A. I would expect them to make a recommendation if and when they make it that would consider all of the possibilities connected with the project.

Q. Would such a recommendation evidence in your mind at least an intention to assist G-Tech to the fullest extent in constructing any type of facilities in Bloomington and Normal? A. I could only speculate along with you on that, but my main interest and the interest I would expect our chief [247] engineer to have would be to protect the interest of the telephone company.

Q. Would the interests of the telephone company be protected by turning a job by awarding the contract to Jerrold and then turning it over to G-Tech in event of delay? A. I don't know. We are getting further into the speculation of it, but I would expect them to think along all the possibilities that may exist in connection with something like this. This is an internal document and it would seem to me that they were functioning pretty much as I would expect them to.

Q. Was a contract ever awarded to the Jerrold Electronics? A. By—

Q. By the Illinois Co.? A. I can't answer that.

Q. Who makes a decision such as that? A. Probably in this case, the chief engineer or maybe with the approval or concurrence of the Operating Vice President. The chief engineer's function is to build a plant and to design it in the most efficient manner that he possibly can. That is his function.

Q. And to the end or to that end it only requires the approval of the Operating Vice President? A. In this particular case it probably would. In many cases it does require many others, it does require many others. It depends on the project.

• • • • •

Merrick Hayes

[265] We had a rather lengthy discussion about this, about our needs, and the fact that the telephone company, the percentage of poles was less than half as compared with the Power Co., and, as the discussion went along, Mr. Rowland tried to get us to lease an entire system as opposed to a pole attachment agreement.

By Mr. Ricks:

Q. You were in the room this morning when Mr. Rowland testified and I believe that his testimony is relatively consistent with what you are saying now. I assume you agree with his characterization of the discussion as it related to the pole attachment agreements? A. Yes. We left his office with a definite understanding that a pole attachment agreement would not be available to us.

Q. And yet, your bid to the city or Cities of Bloomington and Normal, Mr. Hayes, at least the bid that you represented, was not on the basis of a channel service offering. Can you explain that? A. We felt—our bid, of course, was predicated on the acquisition of distant signal waivers from the FCC, which gave us additional time to negotiate for pole attachment agreements or another method of getting the lines to the homes. We felt that the community would put sufficient pressure on the telephone [266] company within this period of time that "We don't want any more telephone poles." As a matter of fact, right now in Bloomington the power company is spending, I believe, about half a million dollars to take out poles in the downtown area, because of the feeling in the community "We don't want any more poles, they are unsightly," and we felt this would be a factor in securing some sort of an agreement from them.

They being unwilling to give it, they would be forced to by public pressure.

Q. Notwithstanding Mr. Rowland's statement that he hoped he would never have to give another pole attachment agreement, it was the hope of your group, I assume from your testimony, that if awarded the franchise you might well succeed in getting a pole attachment agreement? A. Yes.

Q. Did there come a time, Mr. Hayes, when you went back to see Mr. Rowland after the May 10th meeting? A. Yes, when we left the meeting that day, driving back to our respective offices, I told Mr. Ives and Mr. Merwin that I

felt that we should make the source of our irritation and concern more apparent, the reason for it, particularly in view of the fact that Mr. Rowland was relatively new to the presidency of the General Telephone of Illinois and ask them for authority to go back and tell him that we felt we had been compromised.

* * * * *

[269] A. He was quite indignant that I would suggest that his firm would be guilty of such a devious practice and assured me that none of this material had been used by their people, if in fact it was received, and he indicated he had some question about whether it was received by the telephone company.

He indicated further that he had talked to Mr. Wright and that Mr. Wright's characterization of the commitment was conditioned on the local group, our group, entering into a lease of the total system before they would not bring in their subsidiary.

Q. Did you interpret this remark as an explanation for the entry of G-Tech? A. No, because at the meeting of May 10 he indicated unless we entered into a lease, they were going to bring in the subsidiary, G-Tech.

Mr. Lloyd: May I have it read back?

(The reporter read the answer.)

By Mr. Ricks:

On May 10, was G-Tech an applicant for the CATV franchise in Bloomington-Normal? A. No, they had not filed their application at that time, but it had been indicated they were going to come in, as it had been in a news story, a paragraph in the local newspaper.

Q. I don't have your affidavit with me, Mr. Hayes, so I cannot give it to you to refresh your memory. My recollection [270] of your statement in the affidavit attributed to Mr. Rowland was that he would discourage G-Tech, or excuse me, or encourage G-Tech to withdraw. Can you say, on your own memory, what precisely Mr. Rowland

said with respect to G-Tech? A. When he was trying to encourage us on May 10, when he was attempting to encourage our group to lease the total system, he said, If we would do this, if we would agree to do this now, that he would encourage the subsidiary not to come into the bidding, that they were only concerned about being a part of the CATV and if they could be this part, the lessor of the system, that this would satisfy them, but that they definitely wanted to be a part of it.

Q. Did he ever indicate to you the nature of the commitment that he wanted from your company, that is, a moral commitment, a written commitment or what? A. No, I don't believe so.

Mr. Ricks: No further questions.

Presiding Examiner: Have you any further questions?

Mr. Johnson: No.

Presiding Examiner: Mr. Lloyd, do you have some examination? I am sorry, Mr. Wholl, I passed over you.

Mr. Wholl: I have no questions.

* * * * *

[291]

Clarence N. Bristol

was called as a witness and, after being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Lloyd:

Q. Would you please state your name and your business address, Mr. Bristol? A. Clarence N. Bristol, Edmonds, Washington.

Q. Who is your employer? A. GT&E Communications, Inc.

Q. What is your position with GT&E Communications, Inc.? A. Northwest Division Manager.

Q. In the past, have you not held positions with that company which involved you in CATV activities in Bloomington and Normal, Illinois? A. Yes.

Q. Please tell us what those positions were and the dates during which you held the positions. A. From February 1968, to November 1968, I was Manager—Community Relations. From November '68, thru roughly first of June '69, I was Division Marketing Manager.

Q. In your position as Manager of Community Relations, did you or did you not have any responsibilities pertaining to CATV in Bloomington and Normal? [292] A. Yes, I did.

Q. Can you tell us very generally what your responsibility was? A. To be in contact with the cities and to do what I could to secure a franchise for my firm.

Q. Franchise? A. Two franchises, one from each city.

Q. But a franchise to do what? A. To provide cable TV service in the communities.

* * * * *

[293] A. These entries were all made within a week, I will say, of the date shown.

Q. May I direct your attention, Mr. Bristol, to the inquiry which you made on April 25, 1968. From whom did you pick up copies of tariffs and correspondence? A. Mr. Griswold.

Q. I don't think there is any data on this record. Mr. Griswold is an employee of General Telephone Co. of Illinois, is he not? A. That is correct.

Q. Now that entry refers to "correspondence with Ives." Can you tell me what those items were that you referred to there? A. Correspondence approximately, I think, two years old at the time, inquiring about using telephone company facilities, they are a broad-band service offering.

Q. Do you recall the substance of the correspondence of the items you picked up? A. Well, a letter from Mr. Ives, it looked like a letter of intent to use telephone company service offering and an acknowledgment of that letter by the telephone company.

Q. Anything else? A. And pieces of correspondence.

Q. Let me direct your attention now, Mr. Bristol, to the inquiry which you made as of the date July 29, 1968. [294]

A. Yes.

Q. That refers to a meeting which you attended—well, let me ask you this: The CNB initials in the second column refer to yourself, I gather? A. Yes.

Q. And the "Davis" in the same column refers to us? A. David Davis, Sr.

Q. Who is David Davis, Sr.? A. He is G-Tech's—a member of G-Tech, the local counsel in Bloomington.

Q. A partner of David Davis, Jr., who is here with me today, is that right? A. That's right.

Q. Now, Mr. Bristol, you refer in your note to a meeting that was held on July 29, 1968. Can you tell me the circumstances under which that meeting came to be scheduled? A. The cities requested it.

Q. You also say "they" and can you tell me who you refer to as "they" in the second sentence? They inquired about 214 problems—does it refer to city officials? A. Yes, city officials and member of a consulting firm who was present.

Q. Now, can you tell me what, if any, representations were made by you and your associates at that meeting pertaining to the so-called 214 problem? [295] A. Well, they acknowledged that a ruling in June, after we submitted our bid, made it necessary for the telephone company to apply for a construction permit under Section 214, that we had in our bid acknowledged the intent to use telephone company broad-band service offerings, and that we still intended to do so, but that the phone company would be involved in one more proceeding than we had originally planned.

Q. Well, the notation here also says, "We said it would not materially affect our proposal."

Can you explain that entry? A. Well, we said we still intended to use the telephone company's broad-band service offering, but should they be unduly delayed, that we had

no reason to believe at that point they would be, we had the option we felt to build our own system.

Q. Now, your entry for August 15, 1968, refers to an attendance at a joint meeting. Will you explain what that joint meeting was? A. The joint meeting was a special meeting to review the three bids submitted to it, submitted to both councils for CATV franchise applications.

Q. Let's see if we can clarify. It was a joint meeting of what? A. It was a joint meeting of the councils of both of the cities of Bloomington and Normal.

Q. And you referred to three bids for the franchise and [296] these are bids for the CATV franchise, but I am sure we will all agree to that, and who were the bidders? A. Bidders were GT&E Communications, Inc., TeleCable Corporation, and Bloomington-Normal-Perfect Pictures Corporation.

Q. Can you tell me, Mr. Bristol, whether or not at that meeting the same position which you discussed at the July 29th session regarding how 214 was involved in your proposal—was also conveyed at this August 15th meeting? A. Yes, that was—that situation was brought up and we conveyed the same attitude as we did at the earlier meeting on July 29th.

Q. Might I ask you to go back to the July 29th entry and the initials JRM appear, and would you tell me who it refers to? A. Mr. Messerli, Eastern Region Engineer.

Q. The same initials appear on entry of August 15, 1968, and do they not also refer to Mr. Messerli? A. Yes, they do.

Q. Were you in attendance as far as you know throughout the August 15, 1968, council meeting, at least to the extent it was an open proceeding and you were entitled to be present? A. Yes, I had attended all of the open proceedings.

Q. Do you recall whether or not any official or employee or representative of General Telephone Co. of Illinois was at that session? [297] A. Yes, there was.

Q. Do you know who? A. Mr. Malone.

Q. Do you know what Mr. Malone's position is at General Telephone Co. of Illinois? A. He is Division Manager.

Q. Was Mr. Malone called upon to make any statements at that meeting? A. Yes, he was.

Q. May I ask whether or not any of the statements which Mr. Malone was called upon to make pertained to the telephone company's obligations in this instance under Section 214 of the Act? A. I don't recall his exact words, but I recall he did acknowledge that General Telephone of Illinois must file an application under Section 214, should any applicant come to them for their broad-band service offering.

Q. May I direct your attention, Mr. Bristol, to the entry which you made in the document which is TeleCable Exhibit 49, the entry which you made on April 24, 1968? A. Yes.

Q. I think it has been sufficiently identified on the record that we don't have to go through a lot of preliminaries. Did you have any role in arranging the "Major Market Presentation" on behalf of your company? [298] A. Yes, I did.

Q. Can you tell me how you went about it? A. Well, I caused a letter to be written asking for time to meet with the top officials of General Tel. of Illinois and of course a couple of phone calls to establish the date, and the date of April 24 was established as a time that we could conveniently meet with their top management.

Q. Was the specific date involved suggested by you or was it suggested by someone else? A. We suggested a bracket of dates and they established the April 24th date.

Q. What was the "Major Market Presentation" designed to accomplish? A. Primarily to declaring G-Tech's official intentions to secure a franchise in Bloomington-Normal to the officials of General Tel. of Illinois and to familiarize them with what our proposal would be to the city and how we expected to go about it at that point in time.

Q. Well, excuse me a minute. Directing your attention to the document that has been received in evidence as Tele-Cable Exhibit 65, specifically I direct your attention to the last two pages of the document. It is fair to conclude, is it not, and correct me if I am wrong, that your company appeared to be soliciting the assistance of the telephone company?

Mr. Ricks: I would certainly stipulate to that.

[299] The Witness: We were, yes.

By Mr. Lloyd:

Q. It was your plan at the time, was it not, to use the channel services of the telephone company? A. It was.

Q. Pursuant to a tariff, the channel service would be provided pursuant to a tariff? A. That is correct.

Q. Why, under those circumstances, did you solicit actively the assistance of the telephone company? A. Well, it was my understanding that G-Tech had received opposition from some of the General Telephone Companies in pursuing franchises in certain market areas of the company and the Bloomington-Normal area was one we had opposition from our affiliate company, so, in effect, this was a sales job.

Q. Mr. Bristol, are you familiar with G-Tech's efforts to secure a franchise from Bloomington and to secure a franchise from Normal to operate CATV systems from April 24, 1968, to, let us say, the end of September 1968? A. Would you read that, please?

(The reporter read the question.)

The Witness: Yes, I am.

* * * * *

[303] Mr. Ricks: Could I have a copy of that letter sometime, Mr. Lloyd?

Mr. Lloyd: Yes. I can represent it was available to you.

Mr. Ricks: It was not in the New York file.

Mr. Lloyd: I don't see any reason why it would be, no, it was not.

By Mr. Ricks:

Q. Who sent the letter, who signed it? A. As I recall, signed by Lowell Thomas.

Q. You also stated, in answer to Mr. Lloyd, Mr. Bristol, you had no reason to believe that GTI's 214 application would be unduly delayed? A. That's right. I had no reason to believe that at that time.

Q. This was in— A. In July or in August 1968.

Q. Did this information come to you from G-Tech from New York? A. Yes, it would have been through our lines of communication that I was given this assurance.

Q. Perhaps from Mr. Winston Stewart, General Manager of G-Tech? A. Yes, although I don't know as he communicated that directly to me, but certainly from him through our lines of organization.

[304] Q. Were you aware, Mr. Bristol, of a planned seminar to be held in Bloomington-Normal for CATV technicians in the summer of 1968? A. Yes, I was.

Q. Were you aware that the seminar was cancelled? A. Yes.

Q. Do you remember why it was cancelled? A. My awareness is just hearsay really, but I was scheduled to appear at that time so I had some involvement and a cancellation was more of a deferment, because the seminar was held later in September or October. But at that point in time most of the people, engineering personnel primarily, were involved with their respective companies in meeting the requirements of Section 214 and the various filings that were necessary during that period and following the June ruling.

It was not, it was just not convenient to get these people together at the earlier date.

Mr. Ricks: Well, Mr. Lloyd, I would like the record to show that the "cc" was sent to Mr. Winston F. Stewart, how is in New York, and this was not, I just suggest—well,

I don't suggest anything, but I have not had an opportunity to review it.

Mr. Lloyd: I would suggest if Mr. Stewart kept a copy of every document of which he gets a carbon copy, he would be out of office space in short order.

Mr. Ricks: Could I have a moment?

[305] Presiding Examiner: Certainly.

Mr. Lloyd: On the record I want the record to reflect I handed Mr. Ricks copies of correspondence between Mr. Bristol or that Mr. Bristol initiated to General Telephone Co. of Illinois officials relating to market presentation and with relation to the fact I would get copies to him at the earliest opportunity, I thought he might want to examine the papers in examining Mr. Bristol.

Mr. Ricks: I am going to hand Mr. Bristol TeleCable Exhibit 63. I believe this one may have been withheld pending a decision by the Examiner. I am not sure.

Mr. Lloyd: I don't think it has been offered.

Mr. Ricks: Perhaps it has not been offered.

By Mr. Ricks:

Q. This document is marked TeleCable Exhibit 63. Would you review it and then read the second paragraph? It is very short. A. Yes.

Q. Would you read it to the reporter, please? A. The second paragraph?

Q. Yes. A. "Cancellation of the school appeared appropriate pending corporate evaluation of the recent FCC decision on telephone company participation in the furnishing of television channels to CATV companies. It may be decided to go ahead with these [306] schools in the future."

Q. You were aware of this decision, were you not? A. Yes.

Presiding Examiner: I think the record would be clearer if we knew who said it to whom and when.

Mr. Ricks: Thank you, excuse me. I am going to offer it into evidence. Let the record show that this is a letter from

GT&E Service Corporation, dated July 2, 1968, to all participants and instructors, subject: CATV Transmission, Engineering School, from D. C. Dimmitt, Director of Operations, Engineering.

(The document referred to was marked for identification as TeleCable Exhibit No. 63.)

By Mr. Ricks:

Q. I assume the purpose of the school referred to in this document, Mr. Examiner—excuse me, Mr. Bristol, was to give special education and training to operating telephone engineers in connection with the construction of channel facilities for CATV? A. Yes. That would be the general purpose of the seminar.

Q. Now, Mr. Bristol, when you answered Mr. Lloyd's question regarding the July 29, 1968, meeting, you indicated that you informed the joint committee that the 214 application would not affect your bid? A. I indicated that we felt it would not affect our bid, [307] right.

Q. Your bid recited, did it not, Mr. Bristol, that you were going to build a channel, you were going to—that you were going to utilize a channel service offering in General Telephone of Illinois? A. Yes, I did.

Q. Your bid was never amended, was it, Mr. Bristol? A. No, only in conversation at that July 29th meeting where we asked the city, "If there was undue delay in Section 214, if there was undue delay, would it affect our bid in the minds of the city if we built our own system?" and their answer was, "No, it wouldn't change the bid, in their opinion."

Q. Insofar as they were concerned, you had promised to build four phases of the system on a particular time schedule and were going to meet that time schedule irrespective of any regulatory problems General Telephone might get into?

Mr. Lloyd: May I have the question? Was it "insofar as they were concerned" or "insofar as you were concerned"?

Mr. Ricks: I am asking Mr. Bristol if he so represented.

(The reporter read the question.)

Mr. Lloyd: I object to the question. I don't think Mr. Bristol, as Mr. Ricks has pointed out, is in position to speak for the council.

Presiding Examiner: I understand. I think Mr. Ricks is just asking Mr. Bristol what he told these people, isn't that [308] correct?

Mr. Ricks: Yes.

Presiding Examiner: Do you have the question in mind?

The Witness: I didn't like one word "irrespective," which was in the question.

By Mr. Ricks:

Q. All right, I strike that word. A. Because I think we were quite respective of what was going on at the time, we asked the city for latitude to either follow our original plan of leasing broad-band facilities or build our own system.

Q. Did you go into any detail as to how this mechanically would occur if you were unduly delayed by 214? By "mechanically" I mean construction of the system. A. Well, we had some discussion about the fact that we, G-Tech, do have totally owned systems. We had our regional engineer with us at the July 29th meeting who could confirm that we had know-how to get men, material and equipment together to build our own systems.

We had done it in other parts of the country, were extending systems in Illinois that were totally owned by G-Tech and merely trying to establish we were capable of marshaling forces to build our own systems.

Q. No, my question, Mr. Bristol, was, did you communicate to the committee or to the council, and particularly the council, [309] just how you would go about building your own system? Do you think the council understood what

you meant when you said, "If 214 delays us unduly, we will build it ourselves"? A. I believe they did, yes.

Presiding Examiner: Do you have a problem with that, Mr. Lloyd?

Mr. Lloyd: No problem with that one.

By Mr. Ricks:

Q. What did you communicate to them? How did you say you would— A. Which meeting are you referring to now?

Q. At any meeting. A. We said we planned to use channel facilities under tariff offering by the telephone company. We acknowledged that the telephone companies must now, since the interim, late June, have to make a filing with the FCC for a construction permit under Section 214, that there was some unknown delay period.

We had no reason to believe that that delay would be excessive at that point, however, should the telephone company be unduly or excessively delayed to jeopardize our time of performance requirements under the ordinance, we would cancel our intent to do business with General Tel. of Illinois and construct our own system.

I think that is about as clearly as I can put it.

Q. You never went into the detail that you would construct [310] partially on power poles, partially underground, that sort of thing? A. No, didn't go into details on the mechanics of building a system with either the committee on July 29th or the council on—or the councils at the joint meeting in August.

Q. Would it be fair to say, Mr. Bristol, you created the impression or at least intended to create the impression you were going to build a traditional CATV system just as you have built them in other communities where you have not used a channel service offering? A. Yes.

Q. You referred to the "Major Market Presentation," Mr. Bristol, in answer to Mr. Lloyd. I would like to hand you—strike that.

Mr. Bristol, referring to the "Major Market Presentation," the document noted "TeleCable Exhibit 65," which was utilized in Bloomington-Normal, is dated April 1968, and I am just stating a fact and will ask you a question in a moment—

Mr. Lloyd: Mr. Ricks, do you have an objection if I hand the witness a copy of the document?

Mr. Ricks: I wish you would.

Mr. Lloyd: Mr. Ricks, do you mind if I stand here, because this is the only copy I have and would like to follow it along?

Mr. Ricks: You may.

[311] By Mr. Ricks:

Q. When you testified on your deposition in Bloomington, Mr. Bristol, that this document was prepared at G-Tech for use in a number of markets in which General Telephone had operating telephone companies, you mentioned Lexington, Kentucky; Durham, North Carolina; Fort Wayne, Indiana; Erie, Pennsylvania, a couple of others which I do not recall. and do you recall approximately when this document was prepared, Mr. Bristol?
A. Well,—

Q. The original "Major Market Presentation," not the one noted April 1968. A. In February, I believe, in February 1968.

Q. You didn't know at that time, did you, Mr. Bristol, nor did anyone else in G-Tech, I assume, who the applicants might be in the various major markets for CATV systems?

Mr. Lloyd: May I have it read back? I think you are missing a predicate as to whether Mr. Bristol prepared it. May I have it read back?

(The reporter read the question.)

The Witness: I would have to answer it this way: We certainly didn't know all of the various applicants that might have approached the particular cities in question.

By Mr. Ricks:

Q. You didn't know, for example, who would have filed in Bloomington-Normal? [312] A. At that time?

Q. In February '68, did you? A. At that time I didn't know.

Q. The city had not even called for franchise bids at that time, had it, Mr. Bristol? A. Let me explain a little bit. I was transferred to Fort Wayne, the regional office, in February. This major market thing was one of my first assignments and I was going after franchises in the major markets.

When you tackle a job, you start trying to find out something about it and you read files and look at part of the marketing projections that have been made in the system and so forth. So it is difficult for me to say exactly what I was confronted with or presented with in the course of getting ready to perform my assignment.

Now may I have your question again?

Q. All right. At the time this document was prepared in February 1968, you did not have knowledge, did you, of the applicants that would be filing for the CATV franchises in the various major markets of the General System?

Mr. Lloyd: Can we confine it to Bloomington and Normal, because that is what we are concerned with? I object because the question is too broad.

Mr. Ricks: Since the document was originally prepared with a number of markets in mind, I think we have to ask the question [313] and then limit it to Bloomington in the next question.

Mr. Lloyd: I voiced an objection.

Presiding Examiner: Overruled at this time.

The Witness: I will put it this way. I was not familiar with all of the applicants that might have applied in all of the cities in question. I think I answered I had before.

By Mr. Ricks:

Q. And the same would be true with respect to Bloomington-Normal? A. Yes.

Q. Was the document shown in draft form to Mr. Winston Stewart? A. I do not know that it was, but I would assume it was.

Q. Would you also assume or do you know it was approved by Mr. Stewart? A. Yes, it had to be.

Q. Now, the document you testified in Bloomington was designed to sell General Telephone Companies on the benefits of the General System of assisting G-Tech in obtaining franchises in the major market areas, is that correct? A. Well, I believe that was part of the intent and I think reading the thing makes it fairly self-explanatory.

Q. Well, I would agree with you, Mr. Bristol. You also mentioned in a question from Mr. Lloyd that part of the purpose or part of the motivation for developing the "Major Market [314] Presentation" was because G-Tech had experienced some opposition from General Telephone Co. in G-Tech's attempts to obtain CATV franchises, is that correct? A. That's right.

Q. I would like to show you a document, Mr. Bristol, which I think has been prepared under your supervision and this does not have an identification—

Mr. Lloyd: Before you hand something to the witness, may I say it as a matter of courtesy?

Mr. Ricks: Yes, certainly.

Mr. Johnson: May I take a quick look?

Mr. Lloyd: That is a document I handed to all of you at one of the earlier sessions, a one-page document.

By Mr. Ricks:

Q. Mr. Bristol, this document that I have handed you does not bear an identification number. It was presented to me by counsel for G-Tech and although it was represented as being rather hurriedly prepared, and I don't believe any accuracy was therefore assured, but, neverthe-

less, it purports to show the communities in the United States in which G-Tech has filed for CATV franchises and the disposition of such franchises where there has been a result.

Now, in many communities I assume they are still pending by the blank next to the community.

I understand you assisted in the preparation of the [315] document? A. Well, not really. I looked at it the other day, but I didn't really assist in the preparation of it.

Q. Have you had a chance to just look through it to see whether, to the best of your recollection, it represents the successes and failures of G-Tech in obtaining franchises?

Mr. Lloyd: Mr. Examiner. I don't know. I assume this is all preliminary and I have no objection to a question being asked of Mr. Bristol if he ever gets to that point of what communities they met telephone company opposition, and that is fair game on cross-examination, but if this is leading up to a review of G-Tech's franchise applications in other communities, it is not valid cross-examination, to begin with, as far as my presentation; and it is not relevant as far as Mr. Ricks' presentation is concerned.

We are concerned with Bloomington-Normal.

Mr. Ricks: Mr. Examiner, I don't think it is proper for counsel to make a legal argument before I ask a question, but let me ask the question and then let him present his argument. I think Mr. Lloyd has opened the area up and I think it is relevant in any event.

By Mr. Ricks:

Q. You had an opportunity to review it, Mr. Bristol?

A. Yes.

Q. I have totaled up, Mr. Bristol, the number of communities [316] in which G-Tech has filed applications in areas where there are General Telephone Companies, as shown by your list, and my figures show 58 such franchise applications from that, and would that be substantially correct, to the best of your knowledge?

Mr. Lloyd: I object.

Presiding Examiner: This is preliminary. Just let it go in as a preliminary and I will overrule you at this time.

By Mr. Ricks:

Q. And it shows, does it not, Mr. Bristol, that G-Tech has filed 24 applications for franchises in communities where General Telephone of—or General Telephone Companies do not operate.

Mr. Lloyd: Objection, it is irrelevant.

Presiding Examiner: Again, I will overrule you on the assumption it is preliminary and accept those as ballpark figures.

The Witness: I haven't totaled them, so I can't say "yes" or "no" to your question.

By Mr. Ricks:

Q. On the "win-lose" column, Mr. Bristol, my figures show you have been awarded 18 franchises in communities where General Telephone Companies operate, and my figures show that you have received no awards in communities where General Telephone Systems do not operate, is that correct?

[317] Mr. Lloyd: I object, it is irrelevant.

Presiding Examiner: Now, I will overrule. We are getting into substance and Mr. Ricks seems to be coming in the back door on what you admitted was fair game.

Mr. Lloyd: What I admitted was fair game, what I opened up were communities where G-Tech encountered resistance from the telephone company in seeking a franchise.

Mr. Ricks: He did not testify to any communities.

Presiding Examiner: I understand, Mr. Ricks, we will let you do it this way.

By Mr. Ricks:

Q. Go ahead and answer the question. A. What was the question again?

Q. Was my recitation of the figures in there substantially correct, 18 awards in communities where General

Telephone Companies operate and no awards in areas where General Telephone Companies do not operate? A. I have not added these up. These are scattered over a group of pages and I never made such a tally, so I can't frankly answer "yes" or "no" as to the figure of 18 or any given figure here.

Q. Do you know how many franchise awards G-Tech had—excuse me, do you know how many franchises G-Tech has been awarded, not those that they purchased, but that have been awarded?

[318] Mr. Lloyd: Object, irrelevant.

Presiding Examiner: Overruled.

The Witness: To the best of my recollection, we have not received any franchise awards in non-General System exchanges, is that the way you put it—

By Mr. Ricks:

Q. Do you know how many franchises you have been awarded?

Mr. Lloyd: Again, I object as being irrelevant.

Presiding Examiner: Overruled.

The Witness: No, I don't know the exact number. I refer to the franchises that we hold on one page of this document and do not have personal familiarity with all of them. I do with some of them. I do know that some of them were acquired franchises under which companies operating cable TV companies were acquired and others are franchises where we built systems.

By Mr. Ricks:

Q. Mr. Bristol, did you prepare a major market presentation addressed to non-General Telephone Companies?

Mr. Lloyd: Object. I don't think it is relevant. We are concerned with what happened in Bloomington-Normal, Illinois.

Presiding Examiner: Mr. Ricks.

Mr. Ricks: Well, I think it is relevant to the intent of their presentation, Mr. Examiner, as to—well, apparently

they were far less successful in non-General systems than they were in General systems.

[319] Presiding Examiner: I will sustain that objection. He objected to your somewhat similar line of inquiry a moment ago because of tendency to impeach, but now it is getting outside of that.

By Mr. Ricks:

Q. Mr. Bristol, the "Major Market Presentation" you testified in Bloomington you recited, I believe, six target areas within the General System that were designated major markets. You also testified that you utilized the "Major Market Presentation" in three of them. I ask you, sir, why you did not use the "Major Market Presentation" in the remaining three?

Mr. Lloyd: I object. Irrelevant.

Presiding Examiner: Overruled.

By Mr. Ricks:

Q. You may answer the question. A. If I said three, I may have been mistaken. I believe we used it in four locations and I think I recited those in my deposition. leaving two states or areas where we didn't use it and that would have been Pennsylvania and Missouri.

Am I right, Columbia, Missouri, is a part of those six communities you referred to?

Mr. Ricks: Would you get Mr. Bristol a copy of this, Mr. Lloyd, '65.

* * * * *

[322] going out in Columbia, Missouri, at this time, I believe; as I recall, our company made a presentation, a bid for a franchise in Columbia perhaps late in '67, and Erie, Pennsylvania, was the remaining presentation that I had been prepared to participate in and I could not answer why that was never made.

As I said, we made the same request to General Tel. of Pennsylvania as we did to all of the rest.

Presiding Examiner: Is this a convenient point for a recess?

Mr. Ricks: Sure.

Presiding Examiner: We will take five minutes.

(Whereupon, at 11:15 a.m. a recess was taken until 11:20 a.m.)

Presiding Examiner: All right, gentlemen, back on the record.

By Mr. Ricks:

Q. Mr. Bristol, you answered one of Mr. Lloyd's last questions regarding the assistance which G-Tech received from General Telephone— A. May I back up a moment on something you asked me earlier regarding this several pages—

Q. Yes. A. I note an error in the page labeled "Pennsylvania" where they list awards to G-Tech of franchises in various boroughs and cities. The City of Leithburg and North Apollo, I believe Hyde [323] Park, are not General System areas. They are Kittaning Telephone areas.

Mr. Lloyd: Can you spell it?

The Witness: I think so, K-i-t-t-a-n-i-n-g.

By Mr. Ricks:

Q. Can it— A. They are part of some other larger telephone organization. I can't recall the name of it.

Q. What is the General Telephone area—excuse me, what is the General Telephone Co. in Pennsylvania, do you know? For example, the Borough of Apollo? A. Well, the Borough of Apollo is a city across the Kittaning River—I beg your pardon, the Kiskiminitas River from Vandergriff, and Vandergriff is a General System telephone exchange and the Boroughs of Apollo and North Apollo are served by another telephone company, the one I just mentioned, Kittaning.

Q. I assume, am I correct, that Vandergriff and North Apollo, East Vandergriff and Borough of Apollo are con-

tiguous communities or communities located in the same area? A. These are communities located across from each other for about three or four miles along this river that I couldn't spell.

Q. Thank you. Going back to the question that Mr. Lloyd asked you about, the assistance G-Tech received from General Telephone Co. of Illinois, and you mentioned some assistance in [324] the development of the construction phases? A. Yes.

Q. This was a significant aspect of your bid, was it not, Mr. Bristol, the four-phase development, the June 1968 target date for the first phase and the other phases after that? A. I don't know if it was significant, but it was required in the bid application, or notice to bidders.

"There was no requirement that performance—that construction be completed in any part of the city within 270 days after award of the franchise, was there? A. No. Again, I would want to refer to the ordinance, but I believe their time frame was a little longer than 270 days to serve an initial portion of the city.

Q. The Exhibit 48.1. TeleCable Exhibit 48.1, which is a memorandum—I am going to hand the witness that exhibit—and it is a memorandum signed by you, which seems to refer to a meeting with General Telephone Co. employees, dated September 9, 1968, and I ask you, sir, to read this paragraph starting at the bottom of the page?

Mr. Lloyd: Which page?

By Mr. Ricks:

Q. The first page. A. Do you want me to read it?

Q. Yes. A. Under "Construction Phases, Item 5, it was questioned [325] whether it would be necessary to adhere to the four-phase schedule as presented to the city on an exhibit map included with our bid. It was felt that with the current tower site location, it may be more efficient to change the sequence of completion of the four phases. It was pointed out, however, that this plan of construction was one of the major points in favor of G-Tech's bid and

a lack of such a plan was a point against the two competitive bids. If we were to change it radically, the City council should be advised and this action would likely precipitate some protest from the local competing group. It was resolved that the original four-phase plan can be followed with very little change."

Q. Were you the one that pointed out to this meeting, Mr. Bristol, the importance of the four-phase construction?

A. Yes, I was.

Q. And your notes that you have in front of you, Mr. Bristol, show, do they not, that the four-phase construction was developed in your meeting of 5-9-68 in Bloomington in which you met with engineers and management personnel of GTI? A. Yes.

Q. It would be fair to say, wouldn't it, Mr. Bristol, this was a significant assist by GTI to your bid, was it not?

A. I will say that it was an assist.

Q. All right, I won't make you accept my characterization of it.

[326] Are you aware, Mr. Bristol, that an employee of G-Tech visited Bloomington and with employees of GTI measured signal strength from the top of one of the dormitories in Normal, Illinois? A. Yes, I am.

Q. That was some assistance, was it not? A. Yes.

Q. That was done in May—May 28, 1968? A. Yes, I remember it well.

Q. The meeting of April 24, 1968, at which you were permitted to make your major market presentation before the President of General Telephone of Illinois and its entire staff, as noted in your notes, was helpful, was it not, Mr. Bristol? A. Not really.

Q. Did you not solicit at that meeting the assistance of General Telephone and its employees in obtaining— A. Yes, I did.

Q. And was not that assistance promised to you? A. Yes.

Q. And was not a coordinator appointed to assist in feeding in information to G-Tech that would be helpful in making it competitive? A. Yes.

Q. Were you aware that in May 1968, Mr. Cox, Chief Engineer of General Telephone Co. of Illinois, directed his department [327] to begin planning a CATV system for G-Tech?

You wrote him a letter—

Mr. Lloyd: Excuse me.

By Mr. Ricks:

Q. I will refresh the witness' memory with an exhibit. I don't want to try to trick him. A. Well, I am not sure about the month, but, yes, I recall that they were looking ahead toward a major project.

Q. Giving the witness TeleCable Exhibit 46, which is dated June 6, 1968, that was helpful to your bid performance, was it not, that the telephone company was getting started with the design of the system as you planned it prior to award of the franchise? A. Well, that action is in early June, and our bid was submitted on May 29, so I don't really believe they did much that I recall until the three bids were known to everyone and it looked like we had a good chance at that point.

Q. I would like to show Mr. Bristol TeleCable Exhibit 43 and this is to RLC from C. L. Cox, dated 5-22, and I would like you to please read that. It is very short. A. "RLC, CATV, Bloomington:

"Please initiate a project to engineer and install a CATV system in Bloomington-Normal on an expedited basis.

"1. Determine who will do it.

"2. A call to Clar. N. Bristol of G-Tech can tell you [328] the first area to start in. 214-484-4156.

"3. Before actual installation, it would be well to plan an inspection trip to an existing installation for plant and engineering people to discuss techniques.

"C. L. Cox"

Q. Mr. Bristol, in your various visits to Bloomington and Normal, did you become familiar with the physical plant layout of the utility and telephone poles and the cable on the poles? A. No, and I didn't make it a point to.

Q. This is not your area? A. That's right, it is not my area. It was not my area at the time.

Q. When did you first consider that you may have to construct a system, or G-Tech may have to construct its own system rather than having General Telephone of Illinois construct it? A. I would say late June.

Q. Of '68? A. Yes, of '68.

Q. Your bid was already in at that time? A. That's right.

Q. And you had proposed the phased construction of a June 19—excuse me, you had proposed the phased construction in that bid, had you not? A. Yes.

[329] Q. Now when you made the determination to build yourself, did you inform the City Council or the committee that your performance might be delayed in any way by the fact that you would have to build yourself?

Mr. Lloyd: I think the record is clear that at that point, if we are at the same point, Mr. Bristol no longer had any duties—

Mr. Ricks: This is prior to the award.

Mr. Lloyd: You said when they decided to construct General system, and I read that as the spring of '69.

Mr. Ricks: He said "June '68."

Presiding Examiner: Ask him what he said and I think he said there was a possibility of June '68.

The Witness: I said there was a possibility.

Presiding Examiner: You made the intention a good deal more definite with your question.

Mr. Lloyd: You went to when the decision was reached.

By Mr. Ricks:

Q. After considering the possibility you might have to construct the system yourself, Mr. Bristol, did you inform the City Council or their committee that this would in any

way slow your performance of construction? A. No, we didn't and for a very good reason.

Q. Because you thought you could meet the construction schedule? [330] A. Well, that is another very good reason, but I would say the primary reason is the fact that the city seemed to be quite definite in the provisions of their ordinance that they expected a certain time of performance and from my previous visits with city managers and in becoming acquainted with their ordinances, it is obvious they meant business and you were either going to have to agree with it or stay out of the ballpark.

Q. You had no concern you could meet the schedule by building it yourself? A. I had confidence we could meet the schedule either way.

Q. Did you ask anybody in your company or did you personally review the pole situation in Bloomington-Normal to determine the length of time it might take for change-outs and the length of time it might take to set poles and that sort of thing? A. No. This is not any big complicated affair. Every city has poles and every city has telephone poles and power poles and some cities even have two sets of power poles and it is just a matter of just going to work when you got the opportunity to serve and in getting the job done. It is not that tough a proposition.

Q. Mr. Bristol, did you ever formally apply or request a pole attachment agreement from General Telephone Co. of Illinois? A. No, I didn't.

[331] Q. Do you know whether anyone in your company did? A. No one did, to my knowledge.

Q. Who is Mr. Hall of G-Tech, Mr. Bristol, G. J. Hall? A. That would be Jerry Hall, the Chief Technician in Bloomington.

Q. Do you have any knowledge of, and I am going to show Mr. Bristol TeleCable Exhibits 54 and 55, and do you have any knowledge of the meeting that is discussed in that exhibit, Mr. Bristol? A. No—

Q. April 3, 1969. A. No. I have no particular knowledge of that meeting.

Q. Mr. Bristol, prior to your major market presentation of April 24, 1968, did you see a comparative market analysis of the economies of constructing a CATV system in Bloomington versus the economies of leasing poles—excuse me, leasing channel facilities from GTI? A. Not that I recall.

Mr. Ricks: I have no further questions.

By Mr. Wholl:

Q. Mr. Bristol, is the final decision as to whether G-Tech will seek a franchise in a given community made after a policy meeting among G-Tech personnel?

Mr. Lloyd: I object. Beyond the scope of direct examination.

* * * * *

[335] Yes.

Q. Does WFS refer to Mr. Stewart? A. Yes.

Q. LET refers to Mr. Thomas? A. Right.

Q. And who does LDB refer to? A. Mr. Brather.

Q. You note on that day those three gentlemen were in Bloomington to discuss overall profitability of CATV in the area? A. Yes.

Q. Do you know or were you informed Mr. Stewart was going to be in Bloomington on that day? A. I believe I knew about it, because I was in Bloomington that same day on another matter.

Q. When you say "overall profitability of CATV in area," is that with particular reference to communities of Bloomington and Normal, or does it cover the whole State of Illinois, or the Central Division? A. Well, I know they were talking about Bloomington-Normal and perhaps we are talking about other communities as well. I was not in the meeting. I was informed that is why those gentlemen were there.

Q. Well, do you have any knowledge there was some concern on the part of G-Tech that CATV operation in Bloom-

ington-Normal [336] would not be profitable? A. Will you repeat that question, please?

(The reporter read the question.)

The Witness: The only thing along that line was it appeared to be less attractive than some of the other areas we had under consideration, in this major market program. Well, I don't think I had any fear it would be unprofitable, let's put it that way.

By Mr. Wholl:

Q. When you first assumed your duties as community relations manager for G-Tech in February '68, did you have occasion to be briefed on the prior developments regarding CATV that had occurred in Bloomington-Normal? A. Yes, generally.

Q. Were you informed that there was at least one group that had evidenced a desire to seek the franchise in Bloomington and Normal? A. Yes.

Q. Who informed you of that? A. It would probably have been Mr. Thomas and Mr. Brather.

Q. Were you also informed that it was the opinion of the Illinois Co., General Telephone Co. of Illinois, that a group, Perfect Picture, had the "inside track" as to the franchise in Bloomington and Normal? A. This seemed to be the general opinion, yes.

Q. Now, were you instructed then to go all-out in an [337] effort to obtain a franchise for G-Tech? A. No, I was not instructed to go all-out. I was instructed to find out what the terms of the ordinance were. Of course, we got copies of that. I was to find out, to contact cities to find out what their intentions were and to make recommendations as I saw them that would produce a favorable proposal to the city.

Q. Had you also been informed the Perfect Picture group had desired a pole attachment agreement from the Illinois Co.? A. As I recall, I was a little confused about that. I—it looked to me as though they had applied for

channel service, at least that is what I felt during this early period here of April and May of '68.

Q. Did you have occasion to receive from anyone in the Illinois Co. the financial projections that had been made by the Bloomington-Normal-Perfect Picture Co.? A. No.

Q. With reference to the council meeting on July 29, 1968, I believe that is the last notation— A. July 29th.

Q. Yes— A. It was not a council meeting, it was a CA-TV committee meeting.

Q. Were TeleCable and/or Perfect Picture represented at that meeting?

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[339] By Mr. Wholl:

Q. Well, you have been present in this room for the last few days, have you not, Mr. Bristol? A. Part of the last two days.

Q. Were you here during the testimony of Mr. George Gage? A. Yes, I was.

Q. On page 116 of the transcript, Mr. Gage was asked the question: "Did G-Tech in March 1969, have the technical expertise to construct and maintain its own system?" And his answer was, "No, sir."

Now is there anything that you became aware of during the course of your interest—direct interest in Bloomington or Normal, which would imply that G-Tech no longer had the expertise and capability of constructing its own system? A. I am going to have to ask a question before I can answer. What do you mean by "expertise" exactly?

Q. Do you have capability to hire, to go out and lease pole space and put your own wires up without going to an independent contractor and having him do it for you? Do you have the expertise to go out and erect new poles in the community and subsequently put your wires on that pole? Do you have the expertise to maintain such a system once it has been erected? A. Well, taking the last part first, yes, we do maintain such systems in other areas of the country.

[340] Whether we recruit and employ our own people to build a system or whether we go to a contractor is a management decision at the time.

Q. Well, you did indicate in response to my question that you believed that G-Tech could construct a system in its own right without going to an independent contractor?

A. Yes, if that were decided that was the way we should do it.

Q. Well, do you know any reason whereby the same would not be true in March 1969? A. No.

Q. Was the material to G-Tech whether the General Telephone Co. of Illinois or G-Tech itself constructs a CATV system?

Presiding Examiner: I will rephrase the question. Did you care whether you built it or GTI built it?

The Witness: No.

By Mr. Wholl:

Q. To your knowledge, there was no economic study done to indicate the cost to G-Tech of either alternative?

A. To my first-hand knowledge, no.

Q. Now I believe that your prior testimony indicates that the one purpose of the major market presentation was that G-Tech had received opposition from affiliated companies in the past as to their participation and this was intended to remove that opposition, is that correct? [341]

A. Part of its purpose was to do that, yes.

Q. Can you elaborate somewhat as to the form this opposition took? A. No, I can't elaborate on it from first-hand knowledge. It was related to me that some of the General System companies were or had been discouraging G-Tech from entering into franchise negotiations in certain areas.

Q. And you do not know why? A. Not really.

Q. Had you acknowledged that such opposition was being made by the General Telephone Co. of Illinois with

respect to Bloomington and Normal? A. Would you repeat it?

(The reporter read the question.)

The Witness: I was informed that there was, yes, prior to this meeting in April.

By Mr. Wholl:

Q. And did you know what form that opposition took?

A. No, not the form of it, no.

Q. Do you know why such opposition by the telephone company would be apparent? A. I could only speculate on it.

Q. Considering that you have already indicated that the purpose of this document was to alleviate the opposition, I think we might as well have your speculation.

[342] Mr. Ricks: I object.

Mr. Lloyd: I will object. If Mr. Ricks is going to object, I am not going to. No, I am sorry. I object. I don't want speculation on the record.

Presiding Examiner: Well, I know the witness used the word "speculation," but I would agree with the Bureau; this is more likely to be in the form of an opinion than true speculation.

I overrule the objections.

Mr. Wholl: Will you repeat the question?

(The reporter read the question.)

The Witness: Well, I have been aware over a number of years that telephone companies are very sensitive to the press and radio, management, educators, in the areas they serve, and they will go to great lengths to stay on the friendliest of terms, which any corporation should do with these people, and in many areas of the country radio, newspaper people were actively seeking franchises and Bloomington was only one example. There were others. And

so I would speculate for that reason the management of General Tel. of Illinois wanted to keep us out or at least at one period of time.

I might go on to cite an example—

By Mr. Wholl:

Q. Just a minute. Let's stop right there. Mr. Lloyd can ask you if he wants to expand.

Mr. Lloyd: I think he is entitled to complete his answer.

[343] Mr. Ricks: I think Mr. Lloyd would like speculation.

Mr. Wholl: I think he already made a responsive answer to the question.

Presiding Examiner: Yes, I think so. The example would merely illustrate what he has already said.

By Mr. Wholl:

Q. Now, the Bloomington and Normal situation, did the telephone company at the subsequent point in time withdraw its opposition to your entering into the contest for the franchise? A. I would have to say "yes," based on things we discussed previously.

Q. Now, Mr. Bristol, if G-Tech chose to take channel facilities under a broad-band service offering, were you concerned that the telephone company would deny service under that tariff offering? A. You mean deny service to us?

Q. To G-Tech. A. No, I wasn't concerned. If we had a franchise from a community to operate cable TV in a community, I never felt that they would deny us service, no.

Q. Then, why would you be concerned that the telephone company did not want an affiliated CATV operator in the community?

Mr. Lloyd: I don't know he ever said he was concerned that they didn't. I don't think you have a predicate for that question.

[344] Mr. Wholl: How about speculating then?

By Mr. Wholl:

Q. Why would you speculate, then, or give a considered opinion that the telephone company did not want an affiliated CATV operator in the community?

Mr. Lloyd: I don't understand the question. Let me have it read back.

(The reporter read the question.)

Mr. Lloyd: Again, I object. I think we are getting a little far afield in speculation and considered opinion, since we have the people here.

Mr. Ricks: I do, too. I think we are building speculation on top of speculation.

Presiding Examiner: I think the question is, why did you care whether the telephone company wanted you in or not?

Mr. Lloyd: Respectfully, Mr. Examiner, I really don't think he said he did, but I am sure he can explain it in the answer to the question.

Presiding Examiner: Well, if he didn't then the next question is, what was the purpose of the major presentation? Why didn't you care?

The Witness: You mean personally?

Presiding Examiner: No, professionally.

The Witness: Well, to answer that, I would say, while we are "sister companies," we would hate to fight like sisters all [345] the time. We would want to approach a community with their blessing. We would hope to be doing business in the same town and same community and would certainly want to have them aware of it and if we are to become a customer of theirs, we would want them to have a complete attitude of good service to us.

Presiding Examiner: Well, I think the point Mr. Wholl is trying to establish is, wasn't the purpose of the major market presentation to elicit the cooperation of the tele-

phone company in any way it might properly offer it to you?

The Witness: That was one purpose.

Presiding Examiner: All right.

By Mr. Wholl:

Q. Thank you. I believe at this time Mr. Lloyd wants to raise—

Mr. Lloyd: I want to discuss timing at this point because I believe it is appropriate.

Presiding Examiner: Yes.

Mr. Lloyd: Mr. Ricks indicated to me in an informal discussion he had two witness he proposed to put on today and he will have approximately an hour and a half of direct examination. I can foresee anywhere from five minutes to one hour of cross-examination based on the deposition.

Could you give us an indication of how much longer you are going to be with Mr. Bristol?

Mr. Wholl: I hope to be through with Mr. Bristol by the [346] lunch break.

Mr. Lloyd: Mr. Naumowicz, I hate to see a hiatus under the circumstances even of an hour, but I do have two rebuttal witnesses who are in town and if Mr. Ricks is going to be an hour and a half with cross-examination, surely we will have only a half-hour left.

I would like to let them go back home and come back Sunday night, if nobody objects to not being able to use up the entire afternoon.

Mr. Wholl: No, as a matter of fact, I would favor such an approach.

Mr. Ricks: Is this Mr. Anderson and Mr. Fleishman?

Mr. Lloyd: Yes.

Mr. Ricks: I would like sufficient time to prepare also.

Mr. Lloyd: I am not concerned about your preparing as much as their schedule.

Mr. Wholl: On this rare occasion we have no disagreement.

Mr. Lloyd: I will release them over the noon hour, if it suits you.

Presiding Examiner: All right, we have an agreement, gentlemen.

Mr. Lloyd: Excuse me, may I inquire of you, Mr. Examiner, what happens if we don't finish on Monday? I know you indicated to me in a discussion we had that your schedule did become somewhat complex after that point.

[347] Presiding Examiner: It is conceivable that Tuesday may have become free for me. I don't know at this time. I expect there will be a message in my office at lunch. Otherwise, I would hope that we would have so little to do we might be able to finish it by sitting a bit late on Monday.

Mr. Lloyd: Fine.

Presiding Examiner: Does it inconvenience you, Mr. Ricks?

Mr. Ricks: No.

Presiding Examiner: Mr. Wholl?

Mr. Wholl: No.

Presiding Examiner: Mr. Johnson?

Mr. Johnson: No.

By Mr. Wholl:

Q. Now, at the time of the submission of G-Tech's franchise application, G-Tech did not condition its bid on obtaining pole attachment agreements, did it? A. No, it didn't.

Mr. Lloyd: I would point out the document is already in. It had been received in evidence.

By Mr. Wholl:

Q. Now, was it G-Tech's belief that if there was a possible delay with respect to a 214 application, that it could successfully negotiate a pole attachment agreement? A. Yes.

Q. Had G-Tech done any prior investigation into the [348] possible alternatives in getting a pole attachment

agreement? A. No, because most utilities will not, whether it is power or telephone, talk to a cable TV operator until he does have a franchise, in any meaningful way.

Q. Considering that your sister company is a telephone company, did you call them up and ask if they had a policy of either granting or denying access to their poles? A. No, I didn't call them up.

Q. Did anyone call them up? A. I don't know.

Q. Now the "Major Market Presentation," TeleCable Exhibit 65—

Mr. Lloyd: I know it well.

By Mr. Wholl:

Q. There are some figures in here concerning the expected revenues to General Telephone Co. of Illinois.

Mr. Lloyd: Page 18?

Mr. Wholl: Page 18.

Mr. Lloyd: Actually, it is Exhibit 65.19.

By Mr. Wholl:

Q. Yes, will you point out—well, it it is not you, but as the presentation points out, the revenues to be derived by the Illinois Co. from CATV operators constructing a wholly owned cable TV system would be none evidently? A. None, except the separate poles, it states here.

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Timothy R. Ives

[364] Q. Their being who? A. Daniels & Associates, and had them retyped for my own edification. Whether this one was typed by them or by my office, I do not know.

Q. Did there come a time, Mr. Ives, when you sent part or all of that material to an employee of General Telephone Company of Illinois?

Mr. Lloyd: Are you referring to 131 at this point?

Mr. Ricks: To the three documents.

Mr. Lloyd: I just wanted to clarify it for the record.

The Witness: I sent to Mr. Norman White the first Daniels study. I do not remember whether I sent him the first complete study. I know that I sent him the figures.

By Mr. Ricks:

Q. The cash projection? A. Cash projection, cash flow, and expense figures.

Q. On the second page of Exhibit 131 there is a stamp. Would you read it? A. Received November 1, 1965, Bloomington Commerce Department.

Q. Was that stamp on the document when you supplied it to the telephone company? A. No.

Q. You assumed that stamp was placed there by the telephone company? [365] A. Yes.

Q. Did they return this material to you at some point in time? A. At some date, I don't know when, it was returned to me.

Q. What was the purpose of your sending this material to Mr. White? A. They had told me that they would have a tariff for leasing a total system. I did not feel from our early studies that it would be to our financial best interests to use the lease of a total system and I told Mr. White that it was too expensive.

He said they would be working on other tariffs. I told him I would be willing to make our information available to him if it would be helpful.

Q. And to formulate a better tariff? A. Right.

Mr. Ricks: Mr. Examiner, I would like to offer TeleCable Exhibits 131, 133 and 134 into evidence.

Mr. Lloyd: I would like to know the purpose for which TeleCable Exhibits 133 and 134 are offered.

Mr. Ricks: I think they are relevant to the issues in the case, the relationship of G-Tech, GT&E Service Corporation, GT&E parent and GTL.

Mr. Lloyd: I should not have made any statement so broad, . . .

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[367] Now, Exhibit 131 states at the top "Lease". What does that mean? A. I believe that meant the lease of a system from General Telephone of Illinois.

Q. Now the other Exhibit 133, the Cash Flow Projections, in the cash flow projection of Exhibit 134, the original Daniels survey, was that on a lease of channel facilities or was that a so-called CATV-owned system? A. The original financial projections were on a CATV-owned system.

Q. I would like to show you TeleCable Exhibit 18, Mr. Ives, which is a letter from Mr. R. W. Britt, Operating Vice President, GTL, to George Gage, Vice President, Telephone Operations Staff, General Telephone & Electronics Corporation, dated February 18, 1966.

I ask you to read the cash projections in the first column and what they purport to be, reading from here to here. A. CATV-owned system, \$661,460.

Q. Before you go any further, Mr. Ives, what is the figure for cash flow for the 10th year from the Daniels report? A. \$661,460.

Q. Now, would you read the next column in the letter to Mr. Gage? [368] A. General Telephone Lease, \$414,650.

Q. And would you read the material that you sent to the telephone company, the last figure in the 10th year? A. \$414,650.

Mr. Ricks: Did you rule on the admission of these exhibits, Mr. Examiner?

Presiding Examiner: Yes, I received it under Mr. Lloyd's reservation.

Mr. Ricks: Mr. Examiner, I would now like to hand the reporter documents for identification, TeleCable Exhibits 118 through 129.

Mr. Examiner, I may or may not offer all of them.

Presiding Examiner: You have your identification?

Mr. Ricks: Yes.

(The documents referred to were marked for identification as TeleCable Exhibit Nos. 118 through 129.)

By Mr. Ricks:

Q. Mr. Ives, I would like to show you a letter dated March 17, 1965, bearing the identification TeleCable Exhibit 118, and ask you what that is? A. It is a letter from me addressed to Mr. R. A. Reed of the General Telephone Company in Bloomington.

Q. What are you asking Mr. Reed in the letter? [369] A. Telling him that I am putting together material concerning the proposed CATV system and I believe I was asking that he indicate that they would rent pole space to us.

Q. Had you had conversations with Mr. Reed prior to this letter? A. Yes.

Q. Concerning CATV in Bloomington? A. Yes.

Q. What was the nature of your conversations? Do you recall? A. To the best of my recollection, I stopped to see him probably several times and told him that I was interested in CATV, that I would be interested in finding out the telephone company's position and would be interested in their reaction.

I know at various points talked about space on their poles.

Q. You had developed, I assume, a rather close relationship with Mr. Reed? A. I had known him for several years before that.

Q. I would now like to show you TeleCable Exhibit 119, and ask you what it is. A. It is a letter from R. A. Reed, District Commercial Manager, addressed to me. It is confirming our recent conversation regarding our company's position in connection with CATV.

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[380] Mr. Ricks: I will be candid, Mr. Lloyd. I was just trying to move it along a little bit.

By Mr. Ricks:

Q. Would you relate to us your recollection of the meeting with Mr. Rowland, Mr. Ives? A. There were two times

that I met with Mr. Rowland. One was in December and one was in May. You are talking about May?

Q. Let us go to the December meeting. What was the date of that meeting? A. The date of the December meeting was approximately the 15th of December.

Q. What was the purpose of that meeting? A. I believe that in a conversation with Mr. Griswold he had suggested that it would be appropriate for me to meet Mr. Rowland. I had lunch with Mr. Griswold, Mr. Rowland, and Mr. Ross of General Telephone.

During the course of the conversation during lunch, we discussed a number of things including that we had mentioned—and I say we, I think it was Loring Merwin had discussed with Walter Wright—a possible interest by G-Tec in working with us.

And also I mentioned pole attachment or this came into the conversation and Mr. Rowland mentioned that he hoped that he would not have to enter into any more pole attachment [381] agreements and continued to sell the idea of a lease system for CATV operators.

Q. Did anyone from G-Tec contact you between the date of December 15, 1967, meeting and your May 10 meeting with Mr. Rowland? A. Anyone from G-Tec?

Q. Yes. A. No.

Q. On what date did the city invite bid for CATV? A. That would have been early May. The date I don't remember.

Q. You were aware, were you not, on May 10, that G-Tec had evidenced interest in a CATV franchise in Bloomington? A. Yes.

Q. Now, will you relate the substance of the meeting, as you recall it, with Mr. Rowland on May 10? A. We went out there, that was Mr. Merrick Hayes, Loring Merwin and myself—

Q. Excuse me, Mr. Ives. I will try to move this along a little bit so you won't have to try to go through the whole thing.

At the meeting, did you express interest in obtaining a pole lease agreement from GTI? A. We discussed it again. yes.

Q. Did Mr. Rowland indicate to you that he would not [382] give you a pole lease agreement? A. We were hopeful that we would get one but we doubted it. We were hopeful we would get one later but he did not say absolutely no we would not have it.

Q. Did he offer you a channel service agreement? A. Yes. He again pointed out what he felt were advantages of the telephone company constructing the CATV system.

Q. Did you indicate whether or not you would accept or that you would execute a channel service agreement? A. We had indicated that we felt that it was too expensive and we wanted to build our own system.

Q. What was his reply to that? A. As I remember, he hoped that we would reconsider or something to that effect.

Q. Was that pretty much the way the meeting ended? A. Yes.

Q. When you filed your application for CATV in Bloomington-Normal, did you condition it on anything? A. Yes. We filed our application and we conditioned it that we would not start construction until, I believe it was, 180 days after we had received waivers from the FCC allowing us to bring in distant signals.

Q. Why did you so condition your bid? A. We felt that a system to be profitable and good service to the area needed to bring in distant signals.

[383] Q. Did you condition it on obtaining pole space from the utility companies? A. No, we did not.

Q. Did you have any plan on how you would build your system if you did get distant signal waivers? A. We had hoped that we would be able to get the telephone company to reconsider or to allow us to lease space on their poles and that really was our full hope. We had done no engineering as to how we would proceed without their space.

Q. Did anyone indicate to you how long it might be to get FCC action on a waiver pleading?

Mr. Lloyd: You mean distant signal request?

Mr. Ricks: Yes, distant signal waiver.

The Witness: We were hopeful that we might get some action within six months.

Mr. Lloyd: Let the record reflect my laughter, please.

Mr. Ricks: I think the record ought to reflect who told Mr. Ives that.

The Witness: Excuse me?

By Mr. Ricks:

Q. Would you state who estimated that length of time for a distant signal waiver action? A. At that point, if I remember correctly, we knew this was a chance we were taking to say that we wanted to wait. We talked to our attorneys and they felt that possibly things were * * *

* * *

[386] Q. I am going to show you Section 10 of the ordinance.

Mr. Lloyd: Which one?

Mr. Ricks: They are both identical, are they not?

Mr. Lloyd: There are about six different ordinances in the record.

Mr. Ricks: Ordinance 1968-27, City of Bloomington, Illinois.

Mr. Lloyd: Excuse me. Let me catch up with you, Mr. Ricks, if you don't mind. What is the section of the ordinance you are referring to?

Mr. Ricks: 10.

Mr. Lloyd: Thank you.

By Mr. Ricks:

Q. Now 10(d) requires the performance bond in the amount of \$200,000 per community, does it not, Mr. Ives?

A. 10(d), yes.

Q. By conditioning your bid on obtaining distant signals, did you or did you not subject yourself to the liability of Section 10(d) in your estimate? A. I don't think we did.

Q. In other words, if you could not get a distant signal waiver the clock wasn't running on the forfeiture of your bond? A. As I recall, this was our thinking. We were risking the \$40,000 bonds but not the \$400,000.

[387] Q. Was it your hope that pole attachment agreements could be obtained with the utility companies during that period? A. Once we had the franchise that was our intent to go back to the telephone company and go to the power company and ask for pole attachment agreement formally, I suppose.

Mr. Ricks: I have no further questions.

Presiding Examiner: Are you going to cross-examine now, Mr. Lloyd?

Mr. Lloyd: Yes. Mr. Wholl is going to go first. I believe he has some questions.

Presiding Examiner: Let us take a five-minute recess.

(Whereupon, at 3:10 p.m., a recess was taken until 3:20 p.m.)

Presiding Examiner: Gentlemen, we are back on the record.

Cross-Examination

By Mr. Wholl:

Q. Mr. Ives, so that I can get a little better time frame, did you receive the results of the report of Daniels & Associates prior to your February 1965 meeting with Mr. Reed? A. I mentioned their visit to Bloomington in 1965 on the first page of that report. If I could look at it and the Reed visit, I could maybe be clearer on that.

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[393] Q. There was no franchise to your knowledge, was there, that would have required that you obtain one if you went by pole attachment agreement with the telephone company? A. It is my understanding that the telephone company had a franchise with the city which could be used to build a CATV system.

But I don't think, ourselves, and I am not a lawyer, we could have gone in and just built a system.

Q. Did you have any occasion to meet with Mr. Reed on June 23, 1965, to discuss the filing of CATV channel distribution rates by General Telephone Company of Illinois? A. I believe at some point we talked—if that is the exact date you can probably verify it, I don't know, but I know I talked with him about the filings.

Q. Do you recall in any of your meetings with Mr. Reed any discussions concerning General's interest in constructing its own system in Bloomington and Normal? A. He brought up the idea of their constructing a system to lease to us.

Q. Talking about in their own right, constructing the system to use, themselves. A. I think someone brought this up. Whether it was Mr. Reed or not, I don't know. They were not going to or that they [394] had not planned to or were not going to build their own system.

Q. So they indicated to you that the General system had no interest in constructing its own facilities in Bloomington and Normal? A. I am a little confused as to what we are talking about. As far as General building the system themselves, I don't remember their saying that they were ever planning to build one, themselves.

I don't remember anything until they started talking about bringing in their subsidiary, that they were seriously contemplating their own system, and I think basically of the two of them as one.

Q. Do you recall having a conversation with Mr. White in which he assured you that General Telephone had no interest in building a system for themselves? A. At some point I had the understanding that they were not coming in, their subsidiary or their sister company was not coming into the market and that is why I would not have turned over the material to him for this study on their tariffs.

Q. Did your discussion with General Telephone Company of Illinois concerning the tariff offering take place throughout the period 1966 through 1968? A. Yes.

Q. Did you at any time refuse service under that tariff [395] offering? A. We indicated we were not interested in it in 1968, I guess in 1967, and earlier, because of the rates.

Q. Did you ever inform Mr. Rowland that you would not consider signing any contract with General Telephone Company of Illinois until a franchise had been awarded?

A. I believe so.

Q. Did Full Vision or Perfect Picture consider the alternative of constructing its own underground facilities?

A. We discussed it, I can remember, very briefly and gave slight thought to it but from what we understood it was prohibitively expensive, particularly in the downtown or established areas of the community.

Q. Did Full Vision or Perfect Picture ever consider constructing its own poles in Bloomington and Normal? A. Yes.

Q. Did you ever do a cost analysis of that alternative? A. No.

Q. Did Full Vision or Perfect Picture ever have occasion to approach the Illinois Power Company concerning pole attachment agreements? A. Yes.

Q. Was this in one point of time or two points of time? A. Oh, several times I have talked to Mr. George Wetzel. I believe his title might be District Manager for the Illinois * * *

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[402] Q. After your meetings with Mr. Rowland in December 1967 and May 1968, had you and Mr. Merwin come to the conclusion that a pole attachment agreement with the telephone company was out of your reach? A. We were well aware that they did not want to grant a pole attachment agreement. We still hoped that they would change their mind.

Q. Was your hope that they would change their mind predicated on your belief that if awarded the franchise the cities could exert pressure on the telephone company to enter into such an agreement? A. Yes.

Q. Were you present at a joint meeting of the Bloomington-Normal Councils on August 15, 1968? A. I was.

Q. Was the General Telephone Company of Illinois represented at that meeting? A. By Mr. James Malone.

Q. Was Mr. Malone asked a series of questions regarding GTI's pole attachment policy? A. He was.

Q. Was this at the instigation of a question you raised regarding that policy? A. As I remember, he was asked, and I don't remember who asked the question first, about whether General Telephone * * *

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[429]

Rex A. Bradley

was called as a witness and, after being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ricks:

Q. Please state your name for the record. A. Rex A. Bradley.

Q. Your address? A. 7473 North Shore Road, Norfolk, Virginia.

Q. You are employed with TeleCable Corporation? A. That's right, President of TeleCable Corporation.

* * * * *

[439] engineers and you said probably also a telephone company engineer. Now what is the purpose of this on-site survey of the utility facilities? A. To identify the specific poles that we would like to use and to determine whether any rearrangement of the power or telephone company lines is necessary in order to permit us to install a cable within the spaces that are allocated by the owner of the poles to us.

Q. Now, I am going to ask you about the typical situation and I am going to ask you whether the typical situation is consistent with what you see on that exhibit as far as the placement of utility poles.

First of all, typically where would you find the power company lines on a utility pole? A. There at the top level of the poles always.

Q. They are that way on this exhibit? A. Yes.

Q. What is the space below the power company poles that must be reserved, in effect, for the power company use? A. On the traditional voltages that are running through the city it is always a minimum of 40 inches, I believe.

Q. Is that for interference purposes or safety or what? A. I think it is primarily a matter of safety.

Q. In other words, the first communication line that you would have would have to be 40 inches below the lowest power line? [440] A. Yes.

Mr. Lloyd: As a matter of fact, I think actually it is a matter of requirement of the National Electrical Safety Code.

Mr. Ricks: I think you are right, yes.

Mr. Wholl: Mr. Naumowicz, I don't like to object to this line of questioning, but if we are going to go along this line, I would like Mr. Ricks to qualify to some extent this witness for the purpose of giving this type of testimony.

Mr. Ricks: I think the witness has testified already that he has constructed a number of cable systems. He has testified also that he has dealt with utility companies. We have, I undersand, representatives of the telephone company here today who are going to testify and I am sure they can correct him wherever he is in error on telephone company policy.

Mr. Wholl: That is exactly the point. You can either qualify the witness as an expert in engineering or expert by the state on the distance between lines—

Mr. Ricks: Mr. Wholl, what I am trying to establish is the problems that a CATV operator typically has in constructing a CATV system. The requirements that Mr. Bradley runs into, the basis or the source of those requirements is somewhat immaterial. They have a practical impact on the construction of a CATV system.

You either have to reset poles or you don't have to. You have to put your wires in a certain place or you don't. Not [441] because you are typically told by a utility company that you must. This contract will require you to do precisely what Mr. Bradley is testifying he typically has to do in dealing with other communities in which he builds systems.

I think if you will let me go along with another two or three questions, you will see what I am driving at.

Mr. Wholl: I will withhold my objection.

Mr. Ricks: May I continue, Mr. Examiner?

Presiding Examiner: You may, Mr. Ricks.

By Mr. Ricks:

Q. Mr. Bradley, where in the scheme of the various cables on a telephone pole are you typically told to place the CATV cable? A. Above the telephone cable, below the power company cables or lines.

Q. How far above the telephone company cable? A. Minimum of 12 inches and they frequently prefer 18 inches, and a minimum of 40 inches below the power company lines. This spacing incidentally applies not only to our cable, but to any appurtenances attached to the cable such as amplifiers.

Q. You must be 12 inches below the bottom of the amplifier to the top of the telephone wire? A. Yes.

Q. Now does the exhibit to the contract that you have in front of you provide essentially the same thing that you testified [442] is a typical requirement? A. Yes, it does.

Q. Going back to your riding around the utility plant, is this what you are looking for to determine the spacing on the poles, to drop the telephone cable and to put the CATV cable above it? A. Yes. We are attempting to get an impression of how much moving of attachments already on the pole will be required and whether the poles are tall enough to permit this moving and still provide the street clearances that are necessary.

Q. There must be a minimum level of the lowest cable from the street? A. Yes.

Q. In your experience does the rearranging usually involve the power company wires? A. Most of the rearranging is telephone company. Some of it may be power company.

Q. Now on a pole, let us assume that it is owned by the power company, would the power company do the rearranging of all the cables on that pole? A. No, I think not. The telephone company would rearrange its own wires, the power company would do its own.

Q. What happens, Mr. Bradley, where this rearranging is required? Who pays for it? A. The CATV company.

[443] Q. What happens, Mr. Bradley, where the power company makes the judgment as to its present and future needs on the pole and the telephone company makes a judgment as to its present and future needs on a pole and there is no space left for a CATV cable? What happens in that situation? A. In that case you have two options. One is to see if you can route your cable around that particular pole, so that you do not need to attach to it. Or I will request the owner of the pole to set a new taller pole which will provide the necessary space.

Q. Who would pay for setting of the new taller pole? A. The cable company pays for it.

Q. Do you consider the alternative of going underground if the pole space is inadequate? A. Yes, occasionally this can be done. As you can appreciate, in a built up community where there are sidewalks and driveways and favorite rose bushes and sewers and gas lines and so forth, going underground may be difficult and expensive.

Q. Mr. Bradley, I would like to shown you TeleCable Exhibit 86. It has pictures of utility poles with power and telephone company lines attached. Could you tell us what those pictures depict? A. They appear to depict installations of telephone company wires which are not at the minimum spacing from the power company wires.

[444] Q. Now if you were to attach CATV cables to poles such as those, what typically or in your judgment would be required? A. In each instance it would require a dropping of the telephone company wire a sufficient distance to permit the cable to be installed above it and maintain a spacing of 40 inches from the power line and at least 12 inches from the telephone line. I can't tell by looking at these pictures, because I can't tell the height of the poles, but in order to maintain the street clearance, it might be necessary to reset these poles—replace them with taller poles.

Q. When you have an existing pole that has lines attached to it, is the resetting of the pole a relatively expensive or inexpensive process? A. It can be quite expensive. It traditionally will run from in the neighborhood of \$60 to a couple of instances in which we have been hit with a bill of \$500 per pole.

Q. Is this called "changing-out" or "make-ready"? What is the proper terminology? A. The terminology commonly used, make-ready is the respacing of the power company and/or the telephone company wires to provide space for the cable. Change-outs traditionally mean the changing of a pole, replacing it with another one.

Q. In the so-called make-ready have you ever experienced any delays by the utility companies involved? A. Yes, delays are common. Telephone companies frequently [445] indicate that they have limited crews, they are doing something else, and they will do it when they get a chance.

Q. Mr. Bradley, in your bid for a CATV franchise to Bloomington-Normal did you condition your bid on anything? A. Yes, we conditioned our bid on the ability to negotiate pole attachment agreements at a reasonable price.

Q. Why did you so condition it? A. The franchise ordinance has a very tight time schedule in it and has very severe financial penalty for failure to meet the time schedule. The ordinance requires that within 30 days of the receipt of the franchise the operator will commence to

negotiate and negotiate pole attachment agreements and that the construction will start within 180 days and that, I believe, 30 percent of the construction will be completed within one year.

To rephrase that, that sufficient plant will be installed to service 30 percent of the households in the community within one year and the completion of the system within 18 months. These are very tight time frames and particularly when it is realized that there is a \$200,000 performance bond which had to be posted to each city.

I was apprehensive that the difficulty in just the red tape requirement for negotiating pole contracts would make it impossible for us to meet the time schedules which were set forth in the franchise ordinance. The ordinance provides that the time of commencement of construction could be waived by the city, [446] but that no other time limit in the franchise ordinance could be waived. Realizing that the telephone company or its subsidiary was a bidder, it appeared to me that we risked the possibility of being unable to negotiate promptly a pole attachment agreement with a possibly disgruntled competitor, were we to receive the franchise.

Q. Now, Mr. Bradley, you subsequently removed that bid, did you not? A. Yes, we did.

Q. Excuse me, the condition to your bid. Would you explain why you did that? A. Yes. The provision in Section 7, I believe it is, of the ordinance indicates that the city would discourage the setting of poles by the CATV operator. One of my people made a trip to Bloomington and Normal to get an interpretation of this provision as well as other provisions in the franchise ordinance—

Q. Excuse me, Mr. Bradley. I don't want the record to be confused.

I am going to show the witness a copy of the Bloomington franchise ordinance, Bloomington CATV ordinance, which is a GT&E Exhibit No. 5. I believe you referred to a section of the ordinance that discouraged the setting of

poles and I think it is Section 4(j) rather than Section 7, which I believe you mentioned. A. That is correct. I was in error. Section 4(j).

* * * * *

[460] By Mr. Lloyd:

Q. At the August 15, 1968, meeting of the joint councils you also indicated, did you not, that TeleCable would not commence construction of the system until after it determined whether objections would be filed by local television stations? A. That is correct.

Q. And that condition also was withdrawn by what has been identified as our Exhibit 14, is that not correct? A. That is correct.

Q. Now you testified as to your understanding of what Mr. Malone had to say at that August 15, 1968, meeting. Mr. Malone did indicate, did he not, that he had no request for pole attachment pending before him at the time of that meeting? A. That is correct.

Q. Now you also testified that as of August 15, 1968, you knew that the Section 214 procedure was going to be a very slow one. I ask you how you knew that? A. In conversation with counsel, this had been my [461] interpretation of his belief of the 214 procedure.

Q. Was this conversation shortly before the August 15th meeting? A. I am sure it was. I don't know the date.

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[469] **James R. DePew**

was called as a witness and, after being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Davis:

Q. Would you state for the record your name, address [470] and occupation, please? A. James R. DePew, 317 North Main, Bloomington, Illinois, attorney-at-law.

Q. Are you connected with the City Government of the City of Bloomington? A. I am acting as its corporate counsel. I have been since 1960.

Q. What are your duties as corporate counsel? A. I am the consultant for all the legal services for the city, the drafting of ordinances and all court matters with the exception of prosecutions on ordinances which is handled by a different attorney.

Q. Did you draft the ordinance of March 1966 which dealt with CATV? A. I assisted in the drafting. Mr. Fleming, who represented Normal, and I worked together on all the CATV matters. As I recall, we worked together on that.

Q. What was the purpose of that ordinance? A. Its purpose was to serve as a stop-gap measure, so to speak. At that point, we had no specific statutory authority in Illinois for the cities to act and there was some question about the extent of our authority. Until we got into the entire subject more thoroughly, we did not want any action to take place and we were doing it frankly to hold the line until we could complete a study and proceed further.

[471] Q. In 1967, was there a committee of the two cities functioning for the purpose of studying CATV in the two communities? A. Well a committee, if you want to make reference to a committee—at the time even prior to the 1966 ordinance Mr. Yeager of Normal is the town's administrator, somewhat analogous to a city manager, and our own city manager, Mr. McAlister, Mr. Fleming and I worked together on this CATV subject.

Then in early 1967, as a result of increased interest being expressed, we formalized a committee to do some research.

Q. Would you explain the nature of the research that was done? A. Well, by research I should possibly use the word survey.

May I look at my file for this purpose?

Q. Why? A. I think I can refresh my recollection. I

don't have in mind the exact date but I think by reference here I can supply it. As I say, we were working together. By that, I mean the town of Normal.

So, on March 9th, I sent a memo to my own counsel and manager suggesting that before I could draft any type of draft on a CATV ordinance that it would be necessary to have [472] some consultation of a technical nature requesting that they authorize the manager or myself to look into the question of obtaining such technical help.

Then March 16th comes to mind because of my copies here of some form letters sent out by Mr. McAlister. The survey situation I am referring to was an attempt by us to see what the over-all picture was in Illinois.

Mr. McAlister prepared these letters and they were for the benefit of Bloomington, of course, and also Normal and he sent them out to some 30 towns in Illinois who had already engaged or had issued franchises with a questionnaire asking their comments, soliciting their help.

At the same time, he sent a questionnaire to the operators of those various systems asking for suggestions and also a form letter that went to several engineering firms who we had understood to be in the electronic engineering, if that is the right term for it, specializing in the type of service that we were seeking and asking if they would be interested in performing personal consultation services for the city. That was the survey.

Q. Did the cities hire a consultant firm? You said they sent out letters to possible people. Did the cities then hire a consultant? A. Yes. Following that date in March and after a report from our city manager, we did proceed to hire an outside [473] consultant. Yes, sir; we did.

Q. Will you explain the steps that were taken in going about hiring this outside consultant? How did the committee proceed? A. We obtained a list—I can't tell you the source because Mr. McAlister obtained that, but at least it was obtained. As a matter of fact, my file reflects a list of 10 different firms of consulting engineers. Mr.

McAlister wrote this letter I mentioned, the middle of March, and it was an invitation, so to speak, to submit their full portfolio of technical background so that we could give some review of the individual firms.

I see by a notation here which was later sent to me and which refreshes my memory on it, dated March 29, 1967, from McAlister where it stated, "We have now received replies from seven engineering firms indicating interest in serving as our consultant."

I didn't recall the exact number until I looked at that.

Now, following that, the so-called committee consisting of the two managers and the two attorneys, arranged interviews or proposed personal interviews with five consulting firms. They invited them to Bloomington for that purpose. Four of them appeared. The fifth backed off at a later date. I am not sure why now.

Following the personal interviews which had in turn [474] followed this submission by each of them of a rather complete portfolio of their recommendations and their experience and background, we made a recommendation and both councils accepted our recommendation.

Q. What was the recommendation? A. The recommendation was that a firm called Barnard and Associates of St. Louis be employed for that purpose.

Q. With regard to Barnard, was the committee aware of any connection with it might have had with various telephone companies prior to the time you hired them? A. Yes. In their submission they set out work which they had performed for various telephone companies, in fact, several, as I remember. Then in the personal interview, we discussed, as we did with each one of the four, whether or not they were then representing any firms whatsoever that would be making a bid.

In short, we wanted to assure ourselves that we would not be cutting out a bidder by any possible conflict of interest or representation that might arise. They set out quite a little information and the telephone companies were included in their list.

Q. Do you believe that the Barnard firm would have been hired if you had known at that time that GT&E Communications was going to be a possible franchise applicant? A. Well, from the information given us at that time, [475] and I received no further information to the contrary, we would have made no different approach to it or we would have hired no one different. There was no conflict insofar as we were concerned.

Specifically on that point, there was in their list—the man we interviewed was Mr. Shonholtz, who was the project engineer who was later used and that was our contact through the firm and they had mentioned and we discussed with him thoroughly at the time of the interview that they had performed work for a General Telephone Company in Iowa and Nebraska.

They were not then currently on a project. They had never performed any work in Illinois for that particular company. That is my present recollection.

Q. After the Barnard firm was hired, what was the next step? A. We went through a series of meetings with this consulting engineer, and carried over to him all this information we had accumulated, which was rather extensive. I am talking about information with respect to complaints from the towns that responded to our inquiry. We gave him certain principles that we wanted incorporated in a final result of an ordinance.

For example, at great length we discussed whether bidding should be considered or entertained on the basis of who would pay the highest amount of franchise fee. We early determined [476] that that should be a fixed percent so that that would not be muddying the water, so to speak, in respect to a comparison of bids. That type of thing was discussed at length, incorporated into the technical information that the consulting engineer prepared, and then the next step, I guess, was the reporting from the Barnard Company in the nature of a preliminary report which, as I recall, was the latter part of June or early July.

Q. 1967? A. 1967.

Q. All the cities, as I recall, did not adopt a bidding ordinance until some time in April 1968. What was the hold-up between June of 1967 and April 1968? A. The Legislature passed some statutory authority in the spring, prior to adjournment in the spring of 1967, which would have had to be before July 1st. There is always a delay in getting the material printed up, of course, from the Legislature. And this is one thing we wanted to have a complete report on.

Even though we had a copy of the bill that was passed, this was one delay in further discussions.

After the first report of Barnard and Associates, I can't now recollect any particular reason for a delay other than the too slow attorneys that were working on it. It stumbled along until the latter part of the year before any [477] real activity was really developed. I know from my notes in my preparation to come here this morning—let me see if I can't suggest a date—as late as November and December, I see here some correspondence about a date we are to get together to try to finalize a final draft of an ordinance. The notation I have here is a date that we set by a letter of December 20th and setting January 9, 1968 as a joint meeting with our consultant and again the same four parties on the so-called committee that we mentioned, including myself.

Q. Subsequent to that time, then, an ordinance was adopted by the cities of Bloomington and Normal, was it not? A. Yes; it was.

Q. Were they similar in nature or in content? A. The two ordinances were identical with the exception, of course, of the names of the towns. This was by an understanding between the two cities. As a matter of fact, it was a new experience to us as to how we were going to go about a joint type of award. I assume that is of no interest for this purpose here but we determined early in the game that we would try to get the consensus of opinion of each of the councils at each step of the proceedings.

Whichever council meeting met first would entertain some discussion on it. If they reacted favorably, for example, on this form of ordinance they would so indicate but not pass the ordinance and that information was returned to the other [478] town. At its subsequent meeting they would proceed to pass the ordinance officially. This is what happened with respect to this ordinance and a couple of other matters later.

Q. Following the adoption of the ordinance, what was the next step? A. The next step was to prepare the form of invitation and specifications to bid. The invitation, itself, and much of that material was prepared by our consultant and also our own city manager. I don't have in mind the exact dates that went out. At least that followed the passage of the ordinance.

Q. By the ordinance, was a time set for the last time for the submission of bid applications? A. Yes; of course.

Q. Was the time May 29th? A. I presume your record will show that, what you have in the record of this case, but I can't tell you offhand without looking further. If you want me to verify it, I possibly can.

Q. Do you recall who submitted the application? A. There were three. That is all we received. There were 12 that had asked for the specifications and terms but we only received three bids. Of course, those were GT&E, the TeleCable Company, Mr. Bradley's company, and what was called the Bloomington-Normal-Perfect Picture.

Q. After these bids were received, what was done with [479] these bids? Did you review them? A. They were referred back to our, I guess we can use the word "committee" again, and we, of course, proceeded at that point to consider and study these bids together with assistance from our consulting firm, and then the consulting firm submitted a report back to our committee with certain comments with respect to the bids.

Q. Did the committee then review this bid and make a recommendation? A. Maybe it would be helpful if I gave

the date of this routine because we followed somewhat of a chronological order here to date.

The first comments or draft of a report that I had noted from the J. C. Barnard Company was dated June 21st. There was some delay at that point because, as I remember now, someone was on vacation in our committee and it was a bad time to try to get them together.

By the time we got them together, other questions came up with respect to the details on the bid. As I remember—again I am not clear, I have nothing here in my notes—but I would guess within the next three weeks following that date which would make it some time the middle of July, some place about in there or maybe the first week in July, there was the question that came up with respect to what we were told was this 214 problem. Understand, that came to our attention after [480] the bids were in.

There also was a question that was brought in by Mr. Bradley's firm about the pole attachments, and an interpretation on this. So, the next action of our committee was to invite the three bidders to have an individual meeting with this committee, steering committee, and explain or clear up any left-over questions that were arising. In other words, there were certain questions that had to be resolved both for their benefit and for ours, and this was done before we ever made a report.

Then we subsequently, of course, made a report as a result of those meetings.

Q. With regard to those meetings, do you recall essentially what the interview with the TeleCable Company covered? A. Of course, the one thing on TeleCable which was emphasized in the report of the Barnard Company was the so-called reservation that they made in the bid. This was emphasized by our consultant in his comment so we took this up as one of the elements of that meeting.

I don't recall who was at that meeting except that I know the result of our later interview was to dismiss that as a problem for two reasons: One reason was that they

indicated—well, part of the question was a matter of interpretation of our ordinance which, as I recall, we resolved agreeably between us as to what the interpretation would be, and [481] that is the main point that was cleared up. TeleCable indicated that they would withdraw their reservation on that. So, that was for the most part disposed of.

The 214 question—

Was your question limited to TeleCable?

Q. My next question concerns GT&E Communications and your interview with them and what that consisted of.

A. Of course, as you must be aware, the question that we had about GT&E at this point was because of the muddled atmosphere that locally we experienced in all kinds of answers given on this 214.

We wanted to see whether or not that bid was still standing, whether they were interested in having that bid remain because of any impact that might be brought about by this 214. That interview was to clear up that point, it is my best recollection now and my recollection is that we did clear it up to this extent.

We had nothing in our ordinances, at no time did we have anything in our ordinance that required making any arrangement with any utility including General Telephone Company or the power company. This was one of the requirements that we had given our consultant to begin with and one that he also in turn recommended, that we should have nothing tuned in with having to go the route where you rent the pole space or where you had to go the route to rent the line system from General [482] Telephone. General Telephone did not make the application but there was sentiment expressed among the council and the general public that was not favorable toward General Telephone.

So, we did not want to have anything in the application that restricted bidding.

The interview then was an important point from the cities' standpoint because this bidding originally had men-

tioned something about, I think it was the voluntary explanation in the bid by GT&E that they would use this cable renting arrangement under the rate tariff then in existence by General Telephone. So that interview was to try to clear up that point.

My recollection on that is that it was cleared up because GT&E said they would go through regardless and, of course, that was the end result of the formal franchise that was later entered into.

Q. What do you mean by "regardless"?

Mr. Ricks: Let him explain.

The Witness: By "regardless", what we were concerned with—on this whole thing is the impact of the viewpoint of the cities was, Number 1, to get the lowest rate; and Number 2, to get the fastest service. That, of course, was the reason why we incorporated a bond, why we were interested in time.

So the answer of GT&E was that, "We will go ahead with the system. If we have to construct our own, we will."

This is oversimplified but that is my best recollection [483] of the gist of our interview and, of course, it is expressed that way in our report.

By Mr. Davis:

Q. The next step then was for the committee to make a report? A. Yes, sir.

Q. By that report, it recommended GT&E Communications; is that correct? A. That report did.

Am I assuming correctly that that report of ours is a part of the record here? A. Yes.

Q. Would you explain to the best of your knowledge how the committee arrived at its recommendation? What was this based on? A. We arrived at it by a process, of course, of all the information then at hand. There was considerable discussion on the subject. Perhaps it doesn't appear in the record but when we refer to three bids we are actually only talking of two actual bids. We from

the start disregarded completely the bid of this Perfect Picture Company for the reason that they did not comply at all with the provisions of the specifications. They were not willing to put up a bond and other things. So, we were only referring to two actual bids submitted. We considered that both bids were from [484] qualified companies financially able to proceed.

Many things were on an equal par; there was no question in our mind about the two bids being proper bids. The two points I mentioned, one with respect to pole attachments which we resolved, the other with respect to 214 which the company itself, resolved by their procedure on it, were disposed of.

So then it came down in our opinion—I should express maybe more my own opinion—which was the better proposition, and we resolved that because the time element from the reputation of both companies would appear to be equal. The whole result had to resolve around which was the better bid on rate.

The rate determination was or the rate submission was, of course, very similar, very close in amount. Then we had to analyze the difference and our committee—at least in our discussions there was a slight edge advantage to TeleCable on the basic connection rate. There was an advantage on the GT&E with respect to the second connections.

Our consultant gave some credence or emphasis to a 10 per cent reduction if you paid a year in advance. The committee disregarded that, I think it is fair to say almost completely, not entirely, but we thought that was not deserving of any great emphasis.

We did think great emphasis would be placed on the second or greater connection for the use of a TV set in a home on the theory that in our area there would be a larger [485] percentage of customers who would ask for more than one connection. Using our own estimate on that basis we felt that the total tariff or total payments to be made

by local people under the GT&E would be less than under TeleCable.

That is the best review of the discussions I could give you at this time.

Q. After the committee made its recommendations to the councils, what happened? A. Then the bomb went off, I think. The Normal council received this report first. It was quite apparent that there was a lot of interest in this thing both from the bidders and from the various local people, of course. They recommended at their meeting that we hold a joint meeting of both councils.

That recommendation came back to Bloomington and, of course, they complied and agreed to have the joint meeting, and that was held.

Q. It was held on August 15th, if I recall, 1968. A. It would be the middle of August. I would not offhand know the date without looking it up. But it was a meeting held when all the participants were there.

Q. Were you at the meeting? A. I was.

Q. Did you hear the presentation of the various franchise applicants? A. I did.

[486] Q. Did any of the presentations do anything to lead you to change your mind as to the recommendation which you had made?

Mr. Ricks: I object. I think this calls for conjecture. I don't believe Mr. DePew was a voting member. I don't believe there is any predicate for the question.

Presiding Examiner: Go ahead and ask him if there was anything different than there had been in the written proposal.

By Mr. Davis:

Q. Was there anything different than what had been in the written proposal? Did anything new come up? A. I can't honestly recollect at this time this much detail except the only little recollection I would have was maybe more emphasis at the public meeting on the effect of this

214. I know Mr. Bradley's presentation emphasized this and it seemed quite apparent, as I now recall, that there was not a total agreement between GT&E's interpretation and the TeleCable Company or their representatives, I should say.

Q. As a member of the committee, did you concur in the recommendation that GT&E be awarded the franchise?

A. Yes; it was unanimous by the committee.

Q. Following the presentation of the parties on August 15th, was there anything that would lead you to change your mind? [487] A. There was no change in the recommendation. I heard nothing at the meeting that would or did change my mind on the conclusions that were reached.

Mr. Davis: Those are all the questions I have at this time of Mr. DePew.

Presiding Examiner: Is the order of procedure agreed upon among you gentlemen?

Mr. Ricks: I would like to ask some questions.

Presiding Examiner: All right.

[488] Cross-Examination

By Mr. Ricks:

Q. Mr. DePew, since Mr. Davis went into this question of the consultant Barnard, I think we ought to try to—

A. I am sorry, I couldn't catch you.

Q. —went into the question of the consultant Barnard and Associates that you hired—you opened this document, did you not, J. C. Barnard and Associates? Isn't this the document that you have? Maybe this is a different one. Perhaps you have not seen this document. A. What is the subject?

Q. It is just a brochure on their company. A. Hold on just a moment, if you will. If you will give me a moment, I think I have perhaps—the document that I referred to a moment ago, I was asked some question about whether

I knew they represented phone companies. The document that I received with respect to that was one I now have here before me. I don't have any date on it, but it was given to us prior, of course, to the time we interviewed him personally.

Q. May I see that for just a moment? Did you note this one entry—this is your book I am showing you, Mr. DePew—this one? A. Yes, I did.

Q. What does it say? A. Well, there are three entries showing work performed [489] for General Telephone Company. One is Columbia, Missouri—do you want me to describe what they are?

Q. No. A. Inventory and preparation of central office equipment.

Q. The next one down. A. The last one was economic cost study of long distance facilities in the State of Illinois.

Q. Mr. DePew, you noted that it was March 29th that you were considering the decision of selecting a consultant. Do you recall this memorandum of March 13, 1967 from Mr. McAlister to the Mayor and City Council of Bloomington? A. Yes, I do. I recall the memorandum.

Q. I assume from this memorandum that it was your belief on March 13th that GT&E Communications would not be an applicant for CATV in Bloomington, Illinois? A. I don't recall ever having that conclusion about this subsidiary, myself, although there is mention made in there that you just now called to my attention. I don't recall whether we had any view on that that early in the game, particularly with reference to this Barnard firm. Is that what you have reference to?

Q. Well, you said in reference to Mr. Davis' question that it wouldn't have made any difference in your judgment whether G-Tec had been an applicant or not. A. Let me explain. Every engineering firm that we contacted [490] seemed to have a contact with either a telephone company—most of them were telephone companies—or some kind of television organization. So, the thrust of

the conversation as I now recall with this Barnard firm was, do you now have any work pending with General Telephone Company that would create a conflict? We did not base it upon a company or an engineering firm that had never performed any service for an organization or some affiliate that might come in. Right or wrong, this was our mode of considering it.

As I recall, there was no work then pending with the General Telephone Company at the time we interviewed them, although there had been work performed in the past. Also, we went into quite great detail on that. My point is, I have to say that to answer your question, that from what I can now recall of the detailed interview this did not seem to be a factor at all with respect to that firm.

Q. I understand that, Mr. DePew, and I am not suggesting to the contrary. I merely wanted the record to be accurate at least from the information that the documents show, contemporary documents show. At the time you chose the Barnard and Associates as your consultant the information which you had was that G-Tec would not be an applicant in Bloomington-Normal and I have asked you to confirm that from the documents. A. This was the information in the bulletin by Mr. McAlister.

[491] Q. Yes, sir.

Did you have any information that G-Tec would be an applicant? A. I can't relate it as to time, but I did have some contact from someone representing them in the course of these several months, but I would not be prepared to say it was at the point you are talking about.

Q. When you were asking Barnard and Associates whether or not they did any work for General Telephone was it because you thought General Telephone might be an applicant or did you know of the involvement of General Telephone at that time? A. We knew that General Telephone would not be an applicant for an operating franchise. I say that because we had a meeting with General Tel at least as early as 1966 or perhaps before. At that time,

we had the meeting Mr. Fleming and I both met with them and their counsel from Springfield, I can't recall his name at the moment, to make certain that they were not making claim to the privileges of operating a cable TV system. There was sentiment against their so doing it. It was the negative aspect that we approached. They assured us that they were making no attempt to proceed as an operating cable television operator.

They did indicate, of course, early that they would be pleased to consider renting the constructed line and this again was a negative sort of thing that we viewed but we were satisfied [492] that General Telephone was not to be an applicant, itself.

Q. I am trying to establish this, Mr. DePew. If you knew that General Telephone of Illinois was not going to be an applicant in its own right and if you also had the information from Mr. McAlister that GT&E was not interested, why was it material in selecting a consultant to determine whether or not they had done work for the local telephone company? A. We asked the same question of every applicant we had. For example, one of the applicants had performed work for the Illinois Power Company. We satisfied ourselves that wouldn't represent a conflict.

Q. You understood or you appreciated the relationship of the local utilities to the CATV service? A. Let me put it this way. We had one engineering firm that had performed services for the City of Bloomington in connection with a lighting system—this turned out not to be a factor because for other reasons we didn't feel they were qualified, but we had to ask of course, as you would with any consultant that you are going to employ, we didn't want a consultant who had a connection or a conflict that would affect their recommendations and their technical presentation, put them on the spot in other words.

Q. I assume, then, that you would have considered the representation of General Telephone of Illinois as some-

what of a conflict if the consultant had been doing such work? [493] A. The reason I say no under the circumstances as I now recall them is their connection was so remote and the amount of work they did was so little with reference to General Tel of Illinois and it was at a period of time somewhat remote—

Q. Excuse me, Mr. DePew, I hope you don't believe that I am suggesting any conflict on the part of Barnard & Associates. That was not the intent of my question. Nor of any improper conduct of your committee. A. I understand.

Q. What I am trying to determine is if there had been a very close relationship between Barnard & Associates and GTI. Say that 90 percent of their business is with General Telephone of Illinois, would you have considered that a conflict in their consulting to your committee? A. Of course this is hypothetical. It wasn't our information but to use your illustration, if we had had a consultant who, say, did 90 percent of their work for the Illinois Power Company, the gas company, the City of Bloomington, as distinguished from Normal, don't you see, or the General Telephone Company or State Farm Mutual Insurance Company which is home based there, I think that would, in our minds, reflect too much of a local connection and particularly if that was work then being performed, I think we would have probably sought a consultant who was outside the immediate local area.

Q. Or if the consultant was connected with any of the [494] applicants I assume you would have had the same concern? A. Of course that would have had the same consideration.

Q. Mr. DePew, when you talked to the TeleCable people following your review of their bid and you had noted the condition on their obtaining pole attachments as a condition to performance, did they explain to you their concern and why they had so conditioned their bid? A. Yes, they did.

Q. Do you recall what they said? A. They indicated on their submission, as I recall it, that the first 30-day period that we built into this thing was too short a period and they felt it was necessary under their interpretation of the ordinance, and I don't recall offhand which section it is now, but they were afraid they would not have enough relief under that provision, where circumstances beyond their control we would have to grant them more time. There were two or three items relating to interpretation.

In other words, the interpretation we put upon it was that we were not conceding anything to TeleCable that was unfair or improper by accepting these suggestions from them that they were withdrawing the reservation.

Q. In your conversations with TeleCable on their reservation of this obtaining of pole lease agreement I assume that you became aware that in constructing their CATV system TeleCable intended to utilize utility poles, did you not? [495] A. We did but they also, at least—again my best recollection—indicated they would proceed to set their own poles.

Q. Mr. DePew, initially when they first made this reservation it was your assumption that they would utilize utility poles in constructing their system, was it not? A. Well, it was evident from their bid and the reservation that they attached that that was the route that they would seek to take if they were able to do so.

Q. Now they expressed to you the concern, did they not, that they might run into problems in obtaining these contracts from the utility companies and that is why they were fearful of the tight performance standards of the ordinance? A. Yes, that is why we reassured them under the interpretation they were putting upon it, it would effect really an exclusion perhaps of their bid, which was not our intent in the original specifications. So, from our meetings, our personal meetings, the contact we had with each of the three companies, as I mentioned earlier, we attempted to resolve those things, which it is my recollection we did resolve.

Q. You did say, did you not, that although the ordinance sought to discourage the setting of poles, nevertheless an applicant could set its own poles in order to perform; is that correct? A. That is correct. I might concede that our language [496] perhaps was a bit unfortunate in even inserting it because it was always our intent that we not limit the bidding, as I mentioned, the two main points we wanted emphasized in our end result was not to limit any bidder to have to do business with another utility, phone company or what have you. So, it was only to put the gist of our thinking in there, if that could be done, the end result is that we wouldn't invite more poles if we could avoid it.

Q. Now, what was your impression concerning the policy of General Telephone of Illinois with respect to pole lease agreements? A. Would you ask the question again?

Q. Yes, sir.

Did you believe, at the time that you were talking to Mr. Bradley's group somewhere around the end of July or early August, that General Telephone of Illinois would grant to TeleCable a pole lease agreement if it were the successful franchisee? A. Again, my remarks would have to reflect the committee reaction rather than possibly my reaction. I don't think the committee knew, I didn't know about it. The thing about it was that we didn't want to be in the middle. With that idea in mind, we again emphasized the fact that the company was on its own. So far as what General Telephone had as a policy, I do not know.

[497] Q. You wanted to pick a company that could perform and you didn't want to get involved in the performance? A. That is exactly right.

Q. Mr. DePew, at the meeting of August 16th, did your understanding of the telephone companies' policies with regard to pole lease agreements become clarified or did the confusion perpetuate? A. The record on that is very clear, I think. There was nothing settled at the August

15th meeting about pole attachments and I don't think anybody expected it to be. It was still a sales' pitch some place along the line about using the cable.

This, of course, was during the period of time when the local friendly television company had already expressed an interest in using the General Telephone Company's system. And an application was made, I think, by them to use this ready-built system by General Tel. It was the third bidder that exercised a lot of interest in making use of the cable and that was the bidder I mentioned that we excluded. So, I learned nothing at the August 15th meeting about pole connections other than they made it clear, I think, the bidders made it clear, that they were all prepared to go ahead without respect to pole attachments.

Q. Well, without conditioning their performance on obtaining pole attachment agreements. Isn't that the more accurate? A. Yes, they would go whatever route they decided. In [498] other words, the proposed franchise would not make that determination for them.

Q. They were willing to take their risks under the ordinance if they were awarded the franchise? A. Yes.

Q. What do you think, Mr. DePew, would be the means that G-Tec would perform under the franchise? You initially were aware they were going to lease an entire system from General Telephone of Illinois; is that correct? That was their bid, I believe. A. I believe so.

Q. At a later time, representative of G-Tec said that if delayed unduly by a 214 application, G-Tec would construct, itself. What did that connote to you? A. To go back to August 15th, I think I did mention, and I am sure it was apparent from that meeting that a lot of stress by Mr. Bradley, because he made a good presentation at that meeting and a complete one and a lot of the emphasis, as I recall it, was on this 214 section. The thrust of that was that the other bidder is going to have some difficulty with Section 214. So, following the August 15th

meeting before the council's—let me back up a minute.

At the August 15th meeting, it was made equally clear by the GT&E bid or by the representatives, I should say, that they, on their own, would have the ability to proceed without reference to, without coming under the provisions of Section [499] 214. So, at that point, it is like the pole attachments. We don't know which presentation is correct and so long as it does not affect the end result, the cities were not a party to making that decision. We then had to accept, we felt, the presentation of both of those bidders on their face and we would have to resolve the decision as to which bidder was successful of the two on the basis of rates and we assumed, of course—

Q. You say "we", Mr. DePew. Were you a voting member of the council? A. I am back to my committee now, again.

Q. I am talking about the August 15th meeting. A. At the August 15th meeting, I say "we"—I am referring to the discussions that took place. I am not a voting member, of course, of either council.

Q. Mr. DePew, in the statements that were made by G-Tec that it would either use a telephone lease-back or build, itself, did G-Tec ever say to the council how it would go about building, itself, whether it would lease poles, whether it would set poles, whether it would go underground? Did it ever indicate any of this information?

A. Well, it was very clear, don't you see, that for them to enter into this franchise with a special mention of Section 214, it was obvious that they were saying to us, if it is determined that we cannot fulfill the timetable by working [500] through General Telephone Company on its lease arrangement, then we will have to go entirely on our own and we are prepared to do that.

Now, when you ask, did we know whether they were going to use the poles, I don't know that we did.

Q. Well, did they ever ask for an interpretation of this provision that said the city was going to discourage the

setting of poles? Did anyone from G-Tec ask for a clarification of that provision? A. The only question I ever knew about the interpretation on it was brought up by TeleCable earlier in the sessions.

Q. G-Tec did not ask that at that time? A. I couldn't tell you. I don't recall. It was discussed. I am not sure whether it was discussed openly in the August 15th meeting or not. I couldn't tell you. I couldn't recall now.

Q. At the August 15th meeting, the council retired to an Executive Session, I guess you would call it, did it not, the joint councils, Mr. DePew? A. Yes, sir.

Q. Was a preliminary vote taken as to which applicant would be awarded at that time? A. Not a vote as such. There was a question raised, what is your feeling on this matter because we had to resolve it in some fashion. The reason I say it had to be resolved there, [501] some indication had to be obtained, don't you see, otherwise we would have no way in the world proceeding with separate council actions later. So, there was an expression given as to how the members at that particular time felt about it. I don't think you could properly call it a vote, no. You understand this meeting at this point is not a legally constituted meeting for action by either council. It was our determination that it was a valid closed session to be considered but it wasn't a session where business could be transacted by both councils at the same time.

Q. The actual awards were made at subsequent meetings? A. Yes, sir, except—let me explain again—we followed the same routine we had previously. The first council to receive or to proceed on it indicated their intent, so to speak, but did not pass the ordinance, itself, thereby setting the same for council number two to actually pass the franchise ordinance and went back to council number one for its final passage.

Q. Each council, in effect, made a legislative action in adopting the ordinance? A. Yes, sir.

Q. Did either council in the official minutes recite the purpose or the ground for their action? A. Of course, I did not attend the Normal meeting and would not know as to that at all.

[502] As to the Bloomington meeting, I have no recollection at this point without looking at the minutes whether anything was expressed on the record about explanation or remarks in the course of the meeting. There was some discussion, I know, but how much is on the minutes, I cannot tell you.

Q. As the City Attorney for the community of Bloomington, Mr. DePew, is it your responsibility to defend the legislative actions of the council if they are subjected to legal attack? A. I presume it would be.

Mr. Ricks: I have no further questions.

Presiding Examiner: Mr. Wholl?

By Mr. Wholl:

Q. Mr. DePew, prior to the writing of the 1966 ordinance, did the representatives of the cities ever have occasion to discuss with the telephone company the terms that would be included in that ordinance? A. I have no recollection of any terms being discussed with General Telephone at all.

Q. Was it the feeling of the cities at that time that it would be preferable if a CATV operator took channel facilities from the telephone company in order to avoid further cable being placed on the poles or in existence in the community? A. If I understand your question, would we favor the phone company making the cable available so that no duplication of poles was used?

[503] Q. Yes. A. I think this was submitted by the telephone company as a favorable point to selling their system. I don't recall any sentiment from either council or our committee at any time being favorable toward the General Telephone Company.

As a matter of fact, the sentiment was contrary. There were service problems with General Telephone which, from time to time, the local people came to the two councils, the respective councils, about, and so we had no favorable sentiment toward General Telephone Company whatsoever in that respect.

Q. From time to time were the cities ever informed by the telephone company of any changes in pole line attachment practices? A. I am not sure I understand that question.

Q. Do you recall whether in 1965 sometime the telephone company informed the cities that they would not enter into any pole line attachment agreements with CATV operators? A. As you refresh my memory now, I think that is possible, we did receive some kind of communication to that effect. Apparently, it did not impress me one way or another. I am sorry that I don't have any recollection of making use of that information.

Q. Do you recall that during that period of time whether the telephone company's policy changed back and forth with respect to the pole line attachment agreements? [504] A. I wouldn't know.

Q. Prior to the adoption of the April, 1968 ordinance, do you recall if you or anyone who represented the city were approached by telephone company representatives in an effort to have a requirement written into the ordinance to the effect that the successful CATV applicant would have to lease the CATV facilities from the telephone company? A. I don't have a recollection of anybody approaching me on that point. But way before that date, way before the date of the ordinance, our four-man committee had determined and our consultant had so advised, that we should not incorporate any such thing in an ordinance.

Q. Do you recall what the underlying basis for the recommendation was or why it should have come up at that time? A. At what time?

Q. At the time that the four council members or committee members or the consultant firm should have recommended that you not include such a provision in the ordinance? A. Well, yes, several reasons. Again, according to our consultant and that is that we would be closing the door to certain applications and that was opposite of what we wanted to do. Our purpose was to have a complete competition in this thing and who we were going to award the franchise to. In addition, it was well known locally that the third company, Friendly Television, the so-called local company, it was known at some [505] point that this company had made application to General Telephone to make use of the facilities.

In other words, this would seem to indicate that we should keep the thing open for outsiders to come in and if there were any who wanted to come in to build their own systems.

Q. Were you concerned, Mr. DePew, that in the requirement of the ordinance that a successful franchise applicant secure or obtain a pole attachment agreement within 30 days would also have the effect of closing off that alternative to him if the telephone companies had a policy against such pole contact agreements? A. Your inference by the question indicates a wrong interpretation on the ordinance in my opinion. May I explain?

Q. Certainly. A. The idea of that provision, and apparently, as I say, I am not backing off from what responsibility I may have had in drafting it, it may have been unfortunate wording—I can only recite our own interpretation which I think we were able to portray to Mr. Bradley and his firm along the line—the purpose was not to have them dilly-dally around, but proceed.

Now, if they had elected not to use pole attachments, we had nothing in the ordinance that said they had to use the poles, don't you see? There had to be some regular, orderly procedure so far as setting poles and extending the system and I think you will see some references in

the ordinance to that [506] effect. But it was not the purpose by that provision to prevent somebody from building it if they wanted to proceed on their own.

Q. In the interpretation of this particular section of the ordinance, did you consider the possibility that a CATV operator who may have proceeded in 30 days could never have obtained a pole line attachment agreement with a telephone company and if that were the case what would the action of the cities have been? A. Oh, yes.

Q. Can you expand on that? A. The action would be that if they had to build a system they could come in, I think, if I recall—I would have to put together some hypothetical on your question—suppose they applied, and I think that is the reference, and suppose the power company or the telephone company had not given an answer in that respect and the 30 days has run out, but they have made their application, at some place along the line I suppose we would have anticipated a request for a delay if that would have been a factor in not allowing them to proceed with the construction and their planning and all this.

I think the councils may have granted it for a short time, but not a long period of time because, again, the thrust of the whole thing was in one year have certain things done where you could supply service.

[507] Q. Assume it was a long period of time, would a penalty under the ordinance have been imposed, a forfeiture of the bond if after a CATV operator had applied for pole attachment agreement a final agreement could not have been worked out? A. The responsibility would remain upon the contractor, that is the operator, the CATV operators, and again, this is my interpretation, or ours, of the ordinance which apparently is not in accordance with yours. We did not say that they had to get pole attachments. We did not say they could not put in other poles. We said they had to build a system. But if they failed to make an application for a pole attachment and

then come in later, some months into the program and say to us, "Well, look, fellows, we just went over here across the street to the General Tel or the power company"—whoever it may be—"and they won't let us hook onto the pole", we didn't want to permit that delay in time to grant them an unwarranted extension of the construction of the system.

[508] Q. I believe you stated that you had received some service complaints concerning General Telephone Company of Illinois and therefore initially you were reluctant to lean towards that particular company.

Now, in the final determination as to who the franchise should be awarded to, did the committee weigh the various alternatives so that—if I can frame this a little better—you stated initially at least you believed that the time element was equal. A. Yes.

Q. And with respect to TeleCable there was some advantage as to rates but over-all you decided that the advantage as to rates went to GT&E Communications. A. Yes, sir.

Q. Did you also weigh the factor that service complaints had been made against General Telephone Company of Illinois? A. Yes, sir.

Q. What was the committee's decision on that? A. In the course of the private interviews, or the individual, I should say, interviews—there wasn't anything particularly private about it, we had interviews with each of the three bidders—I have a recollection of the gist of certain questions to GT&E to this effect. And these were suggested again by our consultant, to the effect of who will be doing the service work if you get this bid and proceed to use [509] cable system of General Telephone. Their explanation was that the servicing of that system would be their direct responsibility and that, in other words, service calls would not be handled by General Tel but would be handled by G-Tec.

Q. Now, after the series of meetings that you had, the

August 15th meeting, the telegrams, the question of the 214 delay, was the time element again a factor in the council's determination of who will be able to proceed first? A. No; I don't believe so. You see, the reason for that was, as has already been explained, it was an alternate proposition. That would be the fairest way I could put it. Meaning that if it appeared on a G-Tec bid, if they got the bid, that the 214 would cause a delay by this alternate of using the General Tel cable system, then available to them, the way they express it, was to proceed on their own.

But, to be certain that that was their position and to be certain of the position of the city, you understand—I presume this is in the record—we did modify our original draft of the franchise ordinance so that in effect, if I may paraphrase the idea of the thing, we asked GT&E to put their money where their mouth was. In short, they signed up, and we have the franchise language—I am sure it is here—that if any delay would be occasioned by this 214 arrangement it would not affect the construction time table of the system.

Q. Were you aware, Mr. DePew, that prior to your actually [510] granting of the franchise to G-Tec that the telephone company had already been engaging in preliminary work concerning the construction of the system? A. No. This is the first I have heard of it.

Q. After your August 15th meeting, when you heard the representations made by Mr. Malone concerning the cost policy with respect to pole line contacts, it was not a concern in your mind that there might be some delay on the part of TeleCable in obtaining such an agreement which might precipitate a request for extension of time under performance clauses of your ordinance? A. No, sir. We had equal confidence in the bid of TeleCable Company to proceed on the time schedule they had set out just as much as we did with GT&E.

Mr. Wholl: I have no further questions.

Presiding Examiner: Mr. Johnson.

Mr. Johnson: No questions.

Presiding Examiner: Mr. Ricks.

Mr. Ricks: I have some questions.

By Mr. Ricks:

Q. I asked Mr. Fleming two or three questions, Mr. DePew.

I would like to ask you whether you have a recollection of the same events. I asked him about the joint meeting on August 15th and then I asked him about the closed session [511] following it. I said:

"Question. Did you say at that meeting or did someone else say at that meeting something to the effect 'Let's face it; G-Tec has ability in advantage.' "

"Answer. I did not say that. That statement was made."

Mr. Lloyd: What page are you on, Jay?

Mr. Ricks: On page 56.

Mr. Lloyd: Do you mind if I let the witness follow along with it?

Mr. Ricks: No.

The Witness: Is this Mr. Fleming's deposition?

By Mr. Ricks:

Q. This is Mr. Fleming's deposition.

Then on page 58, I asked the question:

"Was any discussion given to an advantage that G-Tec might have in the quickness that it could provide the service?

"Answer: I think there was without any doubt some discussion regarding the fact that G-Tec had a relationship with General Tel. To the layman at least that appeared to be its advantage but that was recognized."

Do you recall those discussions, Mr. DePew? A. As to the first one on page 56, I don't recall the statement being

made specifically; no. There is no question in the over-all picture that, there was no hiding the fact [512] that this was a company that was an affiliate of General Telephone. There was no question about that. This was given consideration. The advantage was not an advantage with respect to getting the bid or with respect to considering the proposal. If there was any advantage expressed, it might have been with pole attachments.

Q. That is the thought I had in mind, Mr. DePew. A. I think that would have been an obvious conclusion but I don't know of anything else that was pertinent to the over-all discussion other than that.

Q. And isn't it a fact, Mr. DePew, that notwithstanding the hostility that had been demonstrated or had been evidenced against GTI because of the service complaints and what-not in the community, that this in effect built-in advantage overcame that hostility? A. No, sir; not in my opinion.

Q. Was a Mr. Schroeder at the meeting, the joint meeting? A. He is counsel for Normal; yes.

Q. He did attend that joint meeting, did he not? A. My recollection is that he did; yes.

Q. I would just like to read to you a memorandum of Clare Bristol, dated August 23, 1968. He says—

Mr. Lloyd: Can we have an exhibit reference if there is one?

[513] Mr. Ricks: TeleCable Number 85.1.

The Witness: Would you identify the gentleman whose name you mentioned? I can't recall it.

By Mr. Ricks:

Q. S-c-h-r-o-e-d-e-r.

Is that pronounced Schroeder? A. Schroeder; yes.

You named another name a moment ago.

Q. This is Clare Bristol whose memo I am reading from. He is the man who made the presentation on behalf of G-Tec at your meeting. Mr. Bristol has taken notes and apparently put them into a memorandum in which he is

characterizing or reporting the meeting of the Normal Town Council. In the last paragraph he reports as follows:

"Mr. Schroeder mentioned that much effort had been expended and that some difficulties had been experienced to arrive at this point. He suggested that they should state publicly the reasons for the favored franchise. He pointed out the magnitude of the construction project and the requirement to secure further approvals and permits would mean that considerably more time would elapse before customers could be connected to the new service. He further pointed out that G-Tec was the only one of the three bidders willing to start the mechanical aspects of providing the service at an early date. He concluded that there was little over-all difference [514] in rates quoted by the three firms." A. Yes, sir.

Q. From that paragraph, would it appear to you, Mr. DePew, that the Normal council—this is the Normal meeting that he is reporting—made an independent judgment on the basis of its knowledge?

Mr. Davis: Objection.

Presiding Examiner: I must sustain the objection.

By Mr. Ricks:

Q. There is no reference there, is there, Mr. DePew, to the committee recommendation? A. This doesn't mean a thing. That is a comment attributed to Mr. Schroeder. If he did make it he is one of six members of the [515] ven, counting the Mayor, of the City Council of Normal.

Q. He is a voting member of the council? A. Indeed, he is.

Mr. Ricks: I have no further questions.

Mr. Lloyd: We have nothing.

Presiding Examiner: All right.

Thank you very much. You are excused, sir.

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[517]

David E. Anderson

was called as a witness and, after being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Lloyd:

Q. Please state your name and business address. A. David E. Anderson, 1312 East Empire Street, Bloomington, Illinois.

Q. Who is your employer, Mr. Anderson? A. General Telephone Co. of Illinois.

Q. What is your position with that company? A. Operating Vice President.

Q. How long have you held the position? A. Since March 16, 1968.

Q. What company were you with prior to that time? A. General Telephone Co. of Ohio.

[518] Q. Prior to March of 1968 had you ever held any position with General Telephone Co. of Illinois? A. No.

Q. Had you ever held any position with GT&E Communications, Inc.? A. No.

Q. What are the duties of Operating Vice President of the General Telephone Co. of Illinois? A. I am responsible to the President for the administration of our customer service activities. This responsibility includes the administration of our engineering, construction, maintenance and other activities involving direct contact with the customers.

Q. Mr. Anderson, I am going to place before you a copy of a document which has already been received into evidence as the General System Cos. Exhibit No. 37. This is the joint use pole agreement between the telephone company and the power company. Do you recognize that document, Mr. Anderson? A. Yes, I do.

Q. Can you tell me generally what it is? A. It is the joint use pole agreement between General Telephone Co. of Illinois and Illinois Power Co. It provides the condi-

tions under which these two utilities will jointly use poles throughout the operating territories of the two companies.

Q. That is on a statewide basis essentially? [519] A. On a statewide basis, yes.

Q. Does the agreement pertain to the joint ownership of the poles? A. No, the agreement does not contemplate any joint ownership of the poles. Every pole will be solely owned by either the power company or the telephone company.

Q. The agreement itself, which has been admitted, gives the effective so I won't try to get into that. The agreement contemplates, does it not, and I am asking as a practical matter and not necessarily the language of the agreement, contemplates that either the power company or the telephone company might enter into agreements authorizing third parties to use poles? A. Yes, it does.

Q. As a matter of practice does the power company seek the prior approval of the telephone company before entering into any such agreement with a third party? A. No, it does not.

Q. Does it provide any notification after it has entered into such agreement? A. Yes. As a matter of practice there would always be contact between the companies if a third-party agreement had been entered into.

Q. Are you aware whether or not GT&E Communications, Inc. now has an agreement with Illinois Power Co. relating to the use of power company poles in Bloomington and Normal? [520] A. Yes, they do.

Q. Did the power company seek the telephone company's prior approval to that agreement? A. It did not.

Q. Did the power company notify the telephone company that it had entered into that agreement? A. Yes, it did.

Q. And in what manner did it accomplish that notification Mr. Anderson? A. I know that there was contact between our chief engineer and their chief engineering officer about this. Whether this was solely notification we received, I don't know.

Q. There has been introduced into evidence a memorandum reflecting that on April first, 1969, a meeting was held attended by personnel of GT&E Communications, Inc., the Jerrold Corporation, General Telephone Co. of Illinois and Illinois Power Co. Are you generally familiar with the fact that such a meeting was held? A. Yes.

Q. Can you tell me how General Telephone Co. of Illinois or why it came to have personnel represented at that meeting? A. I am sure that we were asked by Illinois Power Co. to attend this meeting, to discuss the means by which pole surveys would be made in preparation for General Telephone Electronics Communications to become a third party on Illinois Power Co. [521] in the Cities of Bloomington and Normal.

Q. You were in the hearing room throughout the morning, were you not, Mr. Anderson? A. Yes, sir.

Q. You heard Mr. Bradley's testimony about pole change-outs? A. Yes, I did.

Q. In his testimony I believe he contemplated a situation where the CATV concern would have a pole attachment agreement with the power company but not the telephone company. That, as a matter of fact, is what the situation is in Bloomington, is it not? A. That is the situation today.

Q. Mr. Anderson, are you familiar with an application which General Telephone Co. of Illinois submitted for, I believe it was in October—on October 3, 1968, to this Commission for Section 214 authority and in that regard I will hand you our Exhibit No. 19. A. Yes, I am familiar with this application.

Q. As a matter of fact you signed the letter of transmittal, did you not? A. I did.

Q. In your letter of transmittal, Mr. Anderson, you request the Commission to direct any correspondence concerning it to one C. E. Munsell at 730 Third Avenue, New York City. [522] Will you tell us why, Mr. Anderson, you would request the Commission to send notices in this re-

gard to Mr. Munsell rather than to someone in your company out in Bloomington? A. As a matter of procedure, all of our applications for construction permits to the FCC are sent through the Service Corporation office in New York. It is my understanding that the reasons for this are to inform, first of all, the Service Corporation when we are submitting an application for a construction permit to the FCC. Also, for the purpose of their reviewing it as to form.

If we have not prepared it in accordance with FCC instructions and procedures, they assist us in making whatever changes may be required. It is also my understanding as a matter of convenience the engineering people of the Service Corporation and the FCC staff have agreed that this makes it simpler for both parties to have one point of contact.

Q. The 214 application to which I directed your reference was subsequently withdrawn, was it not, or request was made to withdraw it at least? A. Request was made to withdraw it, yes.

Q. At the time that request was made, had your company made a decision as to whether if it received 214 certification, it would build the facility itself or contract with a third party to construct the facilities? A. I can't say that a final decision had been made, but [523] certainly our inclination at that time was to contract the system with Jerrold Corporation.

Q. Had you solicited the proposals from companies other than Jerrold in that regard? A. We had.

Q. Can you name them? A. We received a proposal from the Automatic Electric Co.

Q. You subsequently entered into negotiations, I gather, with Jerrold, but not with Automatic Electric? A. Actually we negotiated with both bidders for some period of time and then dropped Automatic Electric from consideration and continued negotiations with Jerrold.

Q. Did you ever enter into an agreement with the Jer-

rold Corporation relating to the construction of the facility in Bloomington? A. No, we didn't.

Q. I think the record is clear on this, but let me ask you this. Does your company, General Telephone Co. of Illinois, have an agreement with GT&E Communications, Inc., which permits the latter to use your poles? A. No, it does not.

Q. Now I have directed your attention already to our Exhibit 37, which was the joint pole use agreement between your company and the power company? A. Yes.

[524] Q. Is it or is it not true that one of the things that will be done under that agreement is that your company will be required to purchase poles from the power company? A. Yes, that's right.

Q. This arises from the fact, does it not, that at the present time on a statewide basis the power company owns substantially a greater number of poles than the telephone company does? A. Yes, they do.

Q. One of the intents of the agreement is to equalize ownership of poles on a statewide basis? A. That's right.

Q. Now under that agreement is it contemplated that General Telephone Co. of Illinois will purchase from Illinois Power Co. poles now owned by the power company to which G-Tec or GT&E Communications, Inc., has affixed its cable? A. We do not plan to.

Mr. Ricks: Could I have the question read back?

(The reporter read the question.)

Mr. Ricks: The agreement you are referring to is the joint agreement between GTI and ITC?

Mr. Lloyd: Yes, Exhibit 37.

Mr. Ricks: Thank you.

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[532] required, what resources we would require in order to engineer and construct a system if we received an application. I don't recall that we initiated any engineering work in June 1968, but we might have.

Q. I would like to show you TeleCable Exhibit No. 43. It is dated 5/22. Now that is instructions from Mr. Cox, your chief engineer, to Mr. Christian, your outside engineer? A. Mr. Christian is general planning engineer.

Q. That indicates that Mr. Christian initiated the design of a CATV facility, does it not? A. No. It says "initiate a project to engineer and install a CATV system."

Q. Does it refer specifically to G-Tec in that memorandum? A. Yes, it says "A call to Mr. Bristol of G-Tec can tell you the first area to start." It might be helpful to explain that a project is a piece of paper that we submit into our budget program, to provide dollars to carry out a project. This does not in itself signify the start of engineering.

Q. On 5-22-68, Mr. Anderson, the City Councils of Bloomington and Normal had not yet accepted bids for CATV systems, had they? A. I am sure that is right, that they had not.

Q. At this time you had no knowledge as to whether one, two or three of the applicants would propose a channel service [533] offering, did you? A. That's right. I am sure we would not have known at that time how many applicants there were for the franchise.

Q. There could have been 50 for all you knew at that time? A. Yes.

Q. The memorandum also notes in the first paragraph: "Please initiate a project to engineer and install a CATV system in Bloomington-Normal on an expedited basis." Is that correct? A. Yes.

Q. Did you know that Mr. Clare Bristol had met with engineers of G-Tec—excuse me, engineers of GTI to work out a four-phase construction schedule of a CATV distribution facility? A. I am sure I did not.

Q. You mentioned earlier in your testimony to Mr. Lloyd that there were certain performance requirements? A. Yes.

Q. Do you recall whether or not those requirements

called for a four-phased development of a CATV plant?
A. I don't recall.

Q. The date June 19 as a performance date appears rather frequently in the memoranda and documents which we have received from your company, Mr. Anderson. Do you recall the relevance of that date? A. June 19th of what year?

[534] Presiding Examiner: Off the record.

(Discussion off the record.)

Presiding Examiner: On the record.

By Mr. Ricks:

Q. This is a memorandum, TeleCable Exhibit 54.1, dated April 3, 1969. Would you review that please? A. Yes.

Q. I ask you now, Mr. Anderson, if this refreshes your memory and you can recall the June 19th date as being a target date for some aspect of construction of the CATV system? A. It is my understanding that June 19th is a date that, I believe, G-Tec had committed to the City Councils for a completion of phase 1 of their system.

Q. That is my recollection, too.

Mr. Ricks: Would you give the witness a copy of the joint pole agreement between IPC and GTI?

Mr. Lloyd: Yes, I will.

By Mr. Ricks:

Q. Would you turn please, Mr. Anderson, to Article 21?
A. Yes, I have it.

Q. I would like to direct your attention to provision H of Article 21. A. Yes.

Q. Would you read it please? A. Out loud you mean?

[535] Q. Not necessarily. That provision provides, does it not, that the occupation of space by a third party on a pole jointly used by Illinois Power and General Telephone, but owned by Illinois Power, shall be with the concurrence of General Telephone of Illinois?

Mr. Lloyd: I object. I don't think we have witnesses construing the means of contracts. The lawyers can argue this.

Presiding Examiner: Is this just preliminary, Mr. Ricks?

Mr. Ricks: It is.

Presiding Examiner: I think he is just being asked to acknowledge that is what it says.

The Witness: Would you read the question back?

(The reporter read the question.)

The Witness: I don't read it that the occupation of space, the assignment of the space on the pole. As a practical matter this is done with the concurrence of the telephone company. This is subject to the rights we have for certain pole space under other parts of this contract. So that it is the assignment of what space on the pole will be used that is subject to our concurrence, in my opinion.

By Mr. Ricks:

Q. In that regard, Mr. Anderson, in the assignment of space you have a right to reserve under this agreement not only your present needs for communication, but your future needs for communication. Is that not correct? [536] A. Yes, up to the allocation of space which we would have on that pole, which I believe is two feet under this agreement.

Q. I would like to show you TeleCable Exhibit 85, Mr. Anderson. A. I have read it.

Q. The first paragraph recites that you checked or Mr. Cox, I assume, has checked with Illinois Power Co. to get their interpretation of Article 21? A. Yes.

Q. The second paragraph recites the Illinois Power Co. agrees that Article 21 can be read to mean that General Telephone Co. has priority rights on Illinois Power Co. poles and Illinois Power Co. will give us a chance to reserve existing poles prior to CATV occupancy.

Then it says, however, "Illinois Power would expect us to be reasonable and not reserve space on poles which we do not intend to use." I interpret that to mean that you have an opportunity to have a prior right to reserve space on poles before a third party, is that your understanding? A. Poles that we are not now using?

Q. Yes. A. That would be my understanding.

Q. Not only poles that you are using at the present time, but poles you may use in the future? [537] A. Yes, that we could take the space reservation on a pole that we are not now on.

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[538] Q. Surely. A. Yes, I have read it.

Q. The poles in the pictures, as I understand it, are poles owned by Illinois Power to which General Telephone of Illinois has attached its lines and those lines are, in effect, in violation of the minimum spacing requirements from the power company lines, is that correct? A. That is what the memorandum says.

Q. Let us assume it is accurate for the purpose of my questioning, Mr. Anderson. Assuming that third party is to contact to those poles and assuming that the third party will comply with the agreement between G-Tec and Illinois Power, which calls for the third party's lines to be 40 inches below power and 12 inches above your lines, would General Telephone of Illinois do the transfer of the cables down the pole to maintain this minimum separation? A. It would depend on the situation at each individual pole. If there were a large enough pole there to obtain ground clearance, provide our two feet of space at adequate elevation above ground and then 40 inches of space from the top of that space to the power company, then it would be our obligation to transfer down into the proper space on the pole.

Q. What do you mean when you say your obligation to move your lines down? A. As I understand our pole space reservation, it is two [539] feet of the pole at a sufficient distance above ground to meet the requirements of the

State of Illinois for ground clearance. If for some reason we had attached outside that space, the power company could request us to put our facilities in the space that was reserved.

Now I might say that I am not involved in the day-to-day administration of this Illinois Power Co. contract, but this would certainly be what I would expect they would ask.

Q. Let us assume this situation. Let us assume that your telephone line is presently 40 inches below the power company line in its communication space, which I assume would be the typical situation in Bloomington, Illinois, is that correct? A. It should certainly be at least 40 inches below the power company, yes, sir. It could be more.

Q. Now let us say that Illinois Power enters in a third-party agreement, giving that third party space between the 40 inches immediately below the power company lines. Now in some instances that is going to require that your company lower its lines, is that not correct? A. This certainly could be the situation if we were attached to the wrong place on the pole, yes.

Q. Well, you would be attached to the right place on the pole, could you not, Mr. Anderson, if you are 40 inches below the power line? A. No, I believe to be in the right place we must be two [540] feet sufficiently high above the ground to meet the ground clearance, which would be—

Q. I realize that you could be adequate height above ground and you could be adequate height below the power company lines and yet there could still not be enough space to put in a CATV cable 12 inches above your line and 40 inches below the power company line? A. Yes, all right.

Q. In that instance you would have to lower your line, would you not? A. If the pole were sufficiently high that there is space available for us to drop and still meet the ground clearance requirements, then the power company could ask us to drop. That would be a transfer situation, as we described it before.

Q. You would have no legal obligation to ask that under the pole agreement, would you, Mr. Anderson?

Mr. Lloyd: I object.

Presiding Examiner: Sustained.

By Mr. Ricks:

Q. Mr. Anderson, whom would you collect money from for the labor involved in lowering a telephone line where it is already at the so-called contract distance of 40 inches below? Would you charge the third party who was seeking to have adequate space for this? A. We charge Illinois Power Co. However, they billed [541] the third party for our work in addition to their own.

Q. The bills always go through the primary user of the pole? A. Yes. It is actually billed to and paid by the owner of the pole, yes.

Q. I would like to show you, Mr. Anderson, TeleCable Exhibit 87. This is a pole attachment application and permit between Illinois Power Co. and GT&E Communications. In the final column of this, Mr. Anderson, as of May 22, 1969, it shows that G-Tec is contracting to utilize space on 1705 poles owned by Illinois Power Co. and jointly used by General Telephone of Illinois. Is that essentially correct? A. That would be my interpretation of this column, yes.

Q. You indicated in a response to Mr. Lloyd that you were in the process of balancing poles, buying some poles from Illinois Power to balance out the ownership? A. Yes.

Q. But you said you would not purchase poles to which G-Tec had attached cables? A. Yes, that is what I said.

Q. Can you tell us why you have reached that decision? A. Because we have no agreement for pole rental with that company and see no way to administer it properly.

Q. You have situations, do you not, in your Illinois System where you have inherited thirty-party users on your poles?

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[544] are important to the telephone company. So that we do not want to own poles and have some other company on those poles and have no contractual arrangement with that company.

Q. Why could you not have a contractual relationship with the third-party user? A. We have decided that we will not negotiate new pole attachment agreements.

Q. Can you balance the poles in Bloomington with the 1700 poles already under contract to G-Tec?

Mr. Lloyd: Wait a minute. I don't think I understand the question. May I have it read back?

(The reporter read the question.)

Mr. Lloyd: I object. I don't think the question is intelligible.

Presiding Examiner: Do you understand what he is getting at, Mr. Anderson?

The Witness: I understand the first part of it. Can we balance the pole ownership in Bloomington-Normal?

Mr. Ricks: If the witness doesn't understand it, I will restate it.

The Witness: Would you restate it.

By Mr. Ricks:

Q. You have a general pole agreement, dated March something, 1967? A. Yes, sir.

[545] Q. In which an attempt is going to be made to balance the ownership of the poles to within 2 percent, as I recall? A. Yes, the total poles in the system.

Q. Yes. A. That's right.

Q. The agreement and the attachments to it and the memoranda in your files all indicate that the poles in the Bloomington-Normal area were badly out of balance, something like 27 percent telephone company ownership and 73 percent power company ownership. The agreement that I showed you between Illinois Power and G-Tec indicates that already G-Tec has agreed to contact to over 1700 poles that are jointly used by General Telephone Co. of Illinois, that a large number of additional poles to which General Telephone of Illinois has not yet contacted, and I ask you, Mr. Anderson, how you will achieve the balancing of poles if you decide not to buy any pole to which G-Tec has con-

nected? A. We would have to buy poles to which they were not connected.

Presiding Examiner: That is true. I think Mr. Ricks' point is, does the power company have enough poles left over?

The Witness: I would expect so, yes.

By Mr. Ricks:

Q. Do you know? A. No, I don't know this afternoon.

Q. Would the poles that you would be buying from Illinois [546] Power be concentrated in a particular area in order to avoid those to which G-Tec is under contract to attach? A. I am sure they would not.

Q. The poles that you buy from Illinois Power would not be available to a CATV company to attach cables, would they? A. That is correct.

Q. I would like to show, Mr. Anderson, TeleCable Exhibit 55. The top part of this memorandum, I believe, is written by you? A. Yes.

Q. Would you read that to the reporter please? A. It says, "G-Tec has raised a question of whether they can attach to a pole above our space and get their 12-inch separation by side-arming rather than changing-out the pole."

Q. Would you explain what that means, "side-arming rather than changing-out the pole"? A. Yes. A sidearm would be a metal or wooden arm which would extend horizontally from the pole and the 12-inch separation then would be horizontal separation rather than vertical separation.

Q. What is the response of Mr. Cox?

Mr. Lloyd: Mr. Examiner, excuse me, but we are all concerned with getting through. This is a document already received into evidence. I don't see what purpose is served by having it read into the record.

[547] Presiding Examiner: I am sure this is a foundation to Mr. Ricks' substantial questions coming along.

Mr. Lloyd: I am not so sure of that.

Presiding Examiner: I have great faith, Mr. Lloyd.

The Witness: You want me to read Mr. Cox's answer?

By Mr. Ricks:

Q. Yes. A. "I believe we have resolved this question. Since arm is temporary, we prefer they attach to pole."

Q. It is true, is it not, Mr. Anderson, that, as Mr. Cox has stated in this memorandum, and I am not going to have you read it all the way into the record, but you can have it to look at as I ask the question, it is true, is it not, that various temporary arrangements were condoned in order that the June 19th deadline would be met? A. Would you rephrase your question?

Q. I said various temporary arrangements such as described in your question to Mr. Cox and his response back to you were condoned by the General Telephone of Illinois in order to meet the June 19th deadline, as noted by Mr. Cox in which he says, "Impossible to meet June 19 deadline without such arrangements"? A. Yes.

Q. Is Automatic Electric Co. affiliated with the General System? A. Yes, it is.

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[549] recite, in effect, to the Commission as justifying the construction of interstate lines? Section 214 application on sheet 3 of 3, noting the original signed by Mr. Anderson, at the top has statement of need, economic justification and public interest for proposed project.

Then it goes on a little further. I am asking you, sir, if the evidence of the public need, justification of the public need is not order of service from the customer? A. The need would certainly be embodied in the customer's request for service to us in whatever form it would be in.

Q. In your 1969 budget, Mr. Anderson, did you have enough money budgeted for grants to cover the construction of a CATV system? A. To the best of my recollection it appeared in the first quarter of 1969 that we had enough total money budgeted, but that it would be necessary to spend more in 1969 and less in 1970 to meet the timetable established. This is my recollection.

Q. Did you advise your engineering division that the way to accommodate this in the 1969 budget was to increase CATV installations and reduce outside plant installations?

A. Are we talking the first quarter of 1969?

Mr. Lloyd: What are you handing him, please?

Mr. Ricks: Telecable Exhibit 67. Excuse me, 67 is the readable copy of the request from Mr. C. L. Cox and 69 is Mr. Anderson's response.

[550] The Witness: This is in September 1968. It is advising Mr. Cox that as we move into the first quarter of 1969, which would be the time of our first review of the budget, we would consider that we would plan to reduce telephone plant gross additions in an amount equal to the CATV additions.

At the time of September 20, 1968, the specifics of the outside plant plan would not be final, so that this would say we will take another look at it at the first review of the budget.

By Mr. Ricks:

Q. Am I wrong, you were proposing to reduce your budgeting of telephone outside plant and increasing CATV additions in order to balance your expenditures during this period? A. This would be our plan, but we would not make any such change until the first review. We would look at it at the time of the first review.

Q. I would like to show you TeleCable Exhibit 33, Mr. Anderson, which is a memorandum from you to Mr. Rowland. That followed a telephone conversation with Mr. Gage? A. Yes.

Q. Of Service Corporation. What prompted your telephone call to Mr. Gage?

Mr. Lloyd: What was the question? I didn't get it.

Mr. Ricks: I said what prompted that call to Mr. Gage?

The Witness: It is my recollection that sometime prior to

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[552] The Witness: With one reservation. In August 1968, it was my understanding from Mr. Rowland that I

would not enter into any new pole attachment agreements, that we would certainly attempt to market our channel service offerings. But it was certainly expected that I would get back in if we had requests for pole attachment agreements and review this request with them.

By Mr. Ricks:

Q. But your policy quite clearly was that you would grant no pole attachment agreements? A. Certainly the documents in file, as I read them now, say that. My memory of it is that I was not that positive at that period of time, as expressed in this February fifth memorandum. In other words, at that point it was certainly expected that I would go back and discuss this with him and all the ramifications of the particular situation should we receive application for pole attachments.

Q. You know, of course, that the Cities of Bloomington and Normal, which are the largest cities in your market, I assume, were considering CATV franchises? A. This is in August?

Q. Yes. A. Yes.

Q. Did you feel any obligation to inform the cities of the telephone company's policy with regard to pole attachment [553] agreements? A. I certainly have no contact from the cities in this regard or from franchise applicants.

Q. Did you know that Mr. Malone was attending the meeting of August 15, 1968? A. Yes, I knew he went.

Q. What were his instructions? A. The best I can recall his instructions were that he was not authorized to enter into pole attachment agreements for CATV, but that should we receive such a request, that we would review this with Mr. Rowland.

Q. Do you know when asked the question which was reported in the local newspaper, Mr. Malone was asked the question "Would the telephone company grant a pole attachment agreement?" According to other witnesses, Mr. Malone responded, "We will grant pole attachment agreements to other utilities." A. I believe what I said is that

I have seen that statement in the record of that meeting, yes.

Q. Have you also seen the further statement made by Mr. Malone when asked the question, "Well, CATV systems are not utilities. Will you grant pole attachment agreements to CATV systems," he answered, "We have no policy pro or con on that." A. Again that is my understanding of the record of that meeting that that was his reply.

Q. That, in fact, does not reflect telephone company policy [554] at that time, is that correct? A. Again I can say that my recollection of our policy at that point is that no one in the operating group was authorized to enter into a new pole attachment agreement, but that we had not made a flat statement that would not happen, that if we had an application, we were to review it with Mr. Rowland.

Mr. Ricks: I have no further questions.

Presiding Examiner: Mr. Wholl?

Mr. Wholl: If it is convenient to you, do you want to take a recess?

Presiding Examiner: All right, gentlemen five minutes.

(Whereupon, at 2:50 p.m. a recess was taken until 2:55 p.m.)

[555] Presiding Examiner: Mr. Wholl.

By Mr. Wholl:

Q. In reference to TeleCable Exhibit 85, do you recall what prompted General Telephone of Illinois to inquire of the Illinois Power Company concerning the latter's interpretation of Section 21 of the agreement? A. I am trying to remember whether I knew prior to Mr. Cox's giving me this memo that he was checking this or not. I can say that this would be about the time that it became apparent the cities were going to be taking bids. He was apparently trying to find out what our rates were as opposed to a third party or to make sure that Illinois Power and us understood together what our rates were if a third party were to apply for a pole attachment.

Q. Do you recall if at the time this memorandum was written the telephone company had or foresaw a need for existing space or contemplated a future need for pole space in order to provide communications services? A. Would you read that question?

(The question referred to was read by the reporter.)

The Witness: I don't recall. There would be nothing unusual, no major reconstruction program under way in Bloomington-Normal at that time.

* * * * *

[569] By Mr. Wholl:

Q. Are you aware though of a possible conclusion reached that the rates now in effect are compensatory? A. No, I am not.

Mr. Wholl: I have no further questions.

Presiding Examiner: Mr. Johnson?

Mr. Johnson: I have no questions.

Mr. Ricks: I have no further questions.

Redirect Examination

By Mr. Lloyd:

Q. Mr. Ricks in asking you a question referred to newspaper reports of what transpired at the August 15th council meeting. I am handing you a copy of The Daily Pantagraph, the issue of August 16, 1968. This purports to be the newspaper report of the August 15, 1968 session where Mr. Malone appears. I would ask that you read into the record this paragraph of the report. Otherwise, I fear that the record is not going to be all that clear.

Mr. Ricks: Why not let him read this other paragraph?

Mr. Lloyd: He can start where he wants. What do you want?

Mr. Ricks: Start at the top.

The Witness: "James Malone, Division Manager for GenTel said, 'nobody has approached us regarding a pole

contract agreement'. Later, Loring Merwin, one of the owners of Perfect Picture, said that he, Mr. Ives and Mer-rick Hayes, Secretary of [570] the company, had talked to William C. Roland, President of GenTel of Illinois, and that Mr. Roland had said that GenTel did not expect to give pole attachment agreements for CATV to anyone. Mr. Hayes then asked Mr. Malone if GenTel has a policy of leasing poles to others. Mr. Malone said they did have a policy of leasing to other utilities. When asked specifically if GenTel would lease to Perfect Picture or TeleCable, Mr. Malone said 'I have no answer pro or con'. Other attempts to get an answer resulted in the same response."

Mr. Lloyd: I have nothing further. Thank you, Mr. Anderson.

Presiding Examiner: Thank you very much, Mr. Anderson. You are excused.

(Witness excused.)

Mr. Lloyd: My next witness is Mr. Sydney Fleishman. Whereupon,

Sydney Fleishman

was called as a witness and, after being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Lloyd:

Q. Please state your name. A. Sydney Fleishman. F-l-e-i-s-h-m-a-n.

Q. What is your business address? A. 730 Third Avenue, New York City.

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Rex A. Bradley

[587] company in the same general context of who would get started quickest? A. I think Mr. Malone was asked a question regarding the applicability of 214.

Q. Excuse me. The questions that were asked apparently by Mr. Hayes or Mr. Ives, I don't know which, but Mr. An-

derson read from the stand a little while ago a newspaper article which related answers that Mr. Malone gave. Did they come at some point in the hearing at which you were making your presentation along with the other applicants? A. It came subsequent to my formal presentation but during this exchange of questions and answers between the representatives of the city and the other applicants and me. Mr. Malone was asked, just as the Pantagraph said—as I recall that is a pretty accurate description—specifically what is your company's policy with reference to the granting of pole attachment agreements to CATV companies? He said, "Our policy is to grant attachment agreements to any utility." This almost got by and Mr.—well, somebody from Perfect Picture raised the point with the council that "CATV is not a public utility and would you ask him if he would grant pole attachment agreements, if his company would grant pole attachment agreements to Perfect Picture and to TeleCable if they were given a franchise". Mr. Malone replied that "We have no policy on that."

[588] Q. Did you have conversations following the meeting with Mr. Fleming and Mr. DePew concerning the basis on which the awards were granted? A. I had conversation with Mr. Fleming on the morning following the awards or following that meeting on the 15th.

Q. Did you gather from that conversation that one element or another was decisive in the council's determination? A. Yes, I gathered from that conversation that the speed with which a company could be in service in the community was a determining factor and that G-Tec had the nod.

Q. Mr. Bradley, one other point.

In an answer you gave me and an answer I just got from Mr. Fleishman we were talking about the relative economics of setting your own poles. When I asked the question to you and I asked the question of Mr. Fleishman I asked it in the context of setting an occasional pole to fill in a space for an aerial-built system. Would it be practical, in your judgment, to set poles in a community like Bloomington,

Illinois, for the entire plant of an aerial system? A. No. When I answered the question this morning, whoever asked it, perhaps I misunderstood but my answer was intended to be where it is necessary to set occasional poles, not all of the poles. If you had to set poles in the entire community such as Bloomington and Normal, the cost would be prohibitive because when you get in the downtown areas, [589] particularly where you have solid concrete sidewalks and streets and utilities and all of the complications with downtown lines, it becomes fantastically expensive. So, it would be prohibitive if you had to set them all. We wouldn't think of it.

Q. Thank you.

That is all I have.

Presiding Examiner: Mr. Lloyd?

* * * * *

Excerpts From General Exhibit 5

time after two years from date of award of said franchise.

(c) The policies mentioned in the foregoing paragraph shall name the City of Bloomington and the Town of Normal, Illinois, as additional insured, and shall also contain a provision that a written notice of cancellation or reduction in coverage of said policy shall be delivered to the City and the Town not less than sixty (60) days in advance of the effective date thereof. If such insurance is provided in either case by a policy which also covers the Franchisee or any other entity or person than those above named, then such policy shall contain the standard cross liability endorsement.

(d) The Franchisee shall indemnify and save the City harmless from and against all claims for libel, slander, or the infringement of copyright arising from material carried on the facilities furnished under any franchise granted hereunder and from and against all claims for the infringement of patents arising from combining or using any apparatus, systems, facilities or equipment.

(e) No franchise granted under this Ordinance shall become effective unless and until the Franchisee has filed with the City, in a form satisfactory to the City Attorney, certificates indicating compliance with all statutory or ordinance insurance requirements in addition to the policies required by Sections 6(b) and 6(c) herein.

SECTION 7—TIME OF PERFORMANCE

(a) Within thirty days of the award of any franchise under this Ordinance, the Franchisee shall proceed to apply and/or secure all pole attachment agreements and other permits as required for the construction which shall commence no later than one hundred eighty (180) days after date of franchise award.

(b) Franchisee shall commence operation as defined in Section 2(b) herein within three hundred sixty (360) days of the date of franchise award and shall complete construction to offer service to all inhabitants within the initial service area within five hundred forty (540) days of franchise award.

(c) Extension of the time limits established in Sections 7(a) and 7(b) for delay for inclusion of any distant signals proposed for carriage on Franchisee's system may be granted by the Council for unusual or excessive delays caused by regulatory or other proceedings or hearings required by the Federal Communications Commission. Such waiver of time of performance requirements shall only apply to that portion of the system requiring the hearing or regulatory approval and the time of performance requirements established herein shall apply to all other facets of the CATV system.

(d) The Council may extend the time for start of construction in the event that the Franchisee can demonstrate that delays are caused by circumstances beyond his control that cannot be overcome by the exercise of reasonable diligence on his part. Said extension, however,

will not extend the other time limits established herein and delay not thus excused shall be deemed a material failure to perform under the terms of the franchise and said franchise may be forfeited by declaration thereof by the Council.

(e) All days specified herein shall be calendar days including Saturdays, Sundays and holidays of all kinds.

SECTION 8—CONSTRUCTION AND OPERATIONAL STANDARDS

(a) All construction practices shall be in accordance with standard utilities practices as detailed in the Edison Electrical Institute Publication E3 governing joint use agreements and in the United States Department of Commerce, National Bureau of Standards, Handbook Number 81, "Safety Rules for the Installation and Maintenance of Electric Supply and Communications Lines" and all state and local codes where applicable.

(b) Any system and all equipment used therein shall be designed and rated for continuous 24-hour-per-day operation and the system shall be installed to cover the entire very high frequency (VHF) television and FM broadcast Spectrum and shall have the capability of converting ultra-high frequency (UHF) television signals to very high frequency channels for carriage on the system.

(c) Signals carried on the system shall have the following minimum baseband characteristics:

- (1) Short term gain stability ± 0.5 db
- (2) Long term gain stability ± 4 db
- (3) Peak to Peak Signal to Root Mean Square Unweighted Noise Ratio of 40 db
- (4) Single frequency noise at least 63 db below signal
- (5) Cross modulation 52 db
- (6) Hum 50 db
- (7) Frequency response ± 1.0 db

Excerpts From General Exhibit 6

ORDINANCE NO. 715

An Ordinance of the Town of Normal, Illinois, Providing Terms and Conditions for the Erection, Maintenance and Operation of a System for the Transmission by Cable of Television, Radio and Music Impulses for Sale to the Inhabitants of Said Town of Normal.

Be It Ordained by the Town Council of the Town of Normal, McLean County, Illinois, as Follows:

SECTION 1—GENERAL.

(a) *Substantive Legal Base.* This Ordinance is adopted pursuant to authority granted by Section 11-42-11 of the Illinois Municipal Code as amended by Act 971 approved August 3, 1967.

(b) *Franchise Non-Exclusive.* Any franchise granted by the Town of Normal hereafter will be non-exclusive and will refer to and incorporate this Ordinance by reference.

(c) *Solicitation of Proposals for Franchise.* Any solicitation of proposals for granting of a franchise undertaken by the Town of Normal will refer to and incorporate this Ordinance by reference.

SECTION 2—DEFINITIONS.

For the purposes of this Ordinance, the following terms shall have the meaning specified herein:

(a) *"Town".* The Town of Normal, a municipal corporation of the State of Illinois in its present form or as later reorganized or consolidated. If the word "city" is used it shall in this Ordinance also mean the same as "town" unless used in reference to the City of Bloomington.

(b) *"Commence Operation".* Operation will be considered commencing when enough transmission and distribution

facilities have been placed in use to offer service to the inhabitants of a minimum of thirty per cent (30%) of the initial service area and facilities capable of the reception and retransmission of at least six television stations according to the minimum technical standards herein.

(c) "*Council*". The present governing body of the Town of Normal and any legally appointed or elected successor agency.

(d) "*Community Antenna Television System*" or "*CATV*". The term "community antenna television system" or "CATV" means any facility which, in whole or in part, receives, directly or indirectly, over the air or otherwise, and amplifies or otherwise modifies the signals transmitting programs broadcast by one or more television stations and redistributes such signals by wire or cable to subscribing members of the public. Any system authorized by a franchise issued under the authority of this ordinance shall not be used for PAY TV or for the collection, transmission or delivery of other types of communications except as specifically authorized herein.

(e) "*db*." An abbreviation for decibel which is a standard measurement for gain or loss based on a ratio between two power levels.

(f) "*dbmv*". The level in an electronic system expressed in db's above or below a power corresponding to a root mean square voltage of one millivolt across seventy-five (75) ohms.

(g) "*Distant Signal*". The term "distant signal" means the signal of a television broadcast station which could only be received in the Town of Normal by reception beyond the field intensity contour referred to by the Federal Communications Commission as Grade "B" Contour.

General Exhibit 7

TOWN OF NORMAL
 124 North Street
 Normal, Illinois 61761
 Telephone (309) 452-1106

I, Ronald L. Gramley, Town Clerk of the Incorporated Town of Normal, do hereby certify that the foregoing is a true and correct copy of an original bid of G.T. & E. Communications, submitted to the Town of Normal on the 29th day of May, 1968.

Witness my hand and the seal of said Town of Normal this 23rd day of June, 1969.

/s/ RONALD L. GRAMLEY
 Ronald L. Gramley
 Town Clerk
 Town of Normal

(TOWN SEAL)

STATE OF ILLINOIS
 County of McLean,
 City of Bloomington, } ss.

I, Gertrude Scott, City Clerk of said City, do hereby certify that the foregoing is a true and complete copy of an original bid of G.T. & E. Communications, Inc., submitted to the City of Bloomington on the 29th day of May, 1968.

Witness my hand and seal of said City of Bloomington, this 20th day of June, A.D., 1969.

/s/ GERTRUDE SCOTT
 City Clerk.

JOINT CATV FRANCHISE PROPOSAL AND APPLICATION FORM

To: Honorable Mayor and City Council
 City of Bloomington, Illinois
 Honorable President and Board of Trustees
 Town of Normal, Illinois

1. GT&E Communications, Inc., operating as ☐ an individual ☐ a partnership ☒ a corporation, incorporated

under the laws of the State of Illinois, or otherwise legally authorized to do business in the State of Illinois, hereby applies for a fifteen-year, non-exclusive franchise to erect and operate a community antenna television system in the City of Bloomington, Illinois under the provisions of Ordinance No. 1968-27 entitled "An Ordinance of the City of Bloomington, Illinois, Providing Terms and Conditions for the Erection, Maintenance and Operation of a System for the Transmission by Cable of Television, Radio and Music Impulses for Sale to the Inhabitants of said City of Bloomington" and also applies for a fifteen-year, non-exclusive franchise to erect and operate a community antenna television system in the Town of Normal, Illinois under the provisions of Ordinance No. 715 entitled "An Ordinance of the Town of Normal, Illinois, Providing Terms and Conditions for the Erection, Maintenance and Operation of a System for the Transmission by Cable of Television, Radio and Music Impulses for Sale to the Inhabitants of said Town of Normal". Said Ordinances No. 1968-27 of the City of Bloomington and Ordinance No. 715 of the Town of Normal are identical in every respect and Ordinance No. 1968-27 of the City of Bloomington has been printed and made available for distribution. The applicant is submitting one bid, the terms of which will apply to the City of Bloomington and to the Town of Normal equally in all respects.

2. The Applicant represents and certifies as part of his application that:

A. The proper legal name and present address of the applicant is:

Name GT&E Communications Inc.

Address 730 Third Avenue

City New York State New York Zip 10017

B. Applicant ☒ is ☐ is not owned or controlled by a parent company.

- C. If the Applicant is owned or controlled by a parent company, enter below the name and main office address of the parent company:

Name General Telephone & Electronics Corporation
 Address 730 Third Avenue
 City New York State New York Zip 10017

- D. The following is a complete statement of the subsidiary or otherwise related companies affiliated with Applicant:

See attached list designated Exhibit A

- E. If the Applicant is a corporation, the titles, names and addresses of its officers and directors are as follows:

See attached list designated Exhibit B



GENERAL TELEPHONE & ELECTRONICS CORPORATION

Bethel and Mr. Adams Telephone and Telegraph Company 100%	General Telephone Company of Michigan 100%	General Telephone Directory Company 100%	Traverse Bay Telephone Company (Michigan) 100%	Automatic Electric Company 100%
Central Iowa Telephone Company 100%	General Telephone Company of Missouri 99.99%	Courmay's Pty. Ltd. 100%	Western California Telephone Company 99.99%	Automatic Electric Laboratories, Inc. 100%
Central Iowa Rural Telephone Company 100%	General Telephone Company of Nebraska 100%	Directorates (Aust.) Pty. Ltd. 100%	Woodburn Telephone Company, Inc. 100%	Automatic Electric Co., Inc. 100%
Delaware Valley Telephone Company 100%	General Telephone Company of North Carolina 100%	Directorates (S.A.) Pty. Ltd. 100%	York Telephone and Telegraph Company 100%	
General Telephone Company of Alabama 100%	General Telephone Company of the Northwest 100%	Directorates (Tex.) Pty. Ltd. 100%		General Telephone & Electronics Laboratories Incorporated 100%
General Telephone Company of Alaska 100%	General Telephone Company of the Northwest, Inc. 100%	Directorates (O'land) Pty. Ltd. 100%	Anglo-Canadian Telephone Company 87.33% (2)	
General Telephone Company of California 94.47% (2)	West Coast Telephone Company of California 100%	Directorates (Brit.) Pty. Ltd. 100%	British Columbia Telephone Company 50.24%	General Telephone Laboratories, Inc. 100%
General Telephone Company of Florida 100%	Beaver State Telephone Company 100%	Grass Lake Telephone Company 100%	Ononagon Telephone Company 99.62%	
General Telephone Company of Georgia 100%	General Telephone Company of Ohio 100%	GT&E Communications Inc. 100%	Canadian Telephones and Telegraphs Ltd. 100%	GT&E Service Corporation 100%
General Telephone Company of Illinois 91.91% (2)	General Telephone Company of Pennsylvania 100%	GT&E Data Services Corporation 100%	Compania Dominicana de Telefonos C. por A. 100%	
Suburban Telephone Co. 100%	General Telephone Company of the Southeast 100%	Hawaiian Telephone Company 100%	Dominion Directory Company Limited 100%	
General Telephone Company of Indiana, Inc. 100%	General Telephone Company of the Southwest 100%	Mutual Telephone Company, Inc. 100%	Quebec Telephone 57.07%	
General Telephone Company of Iowa 100%	General Telephone Company of Upstate New York, Inc. 100%	Orange County Telephone Company 55.36% (3)	The International and General Telephone Company Limited 100%	
General Telephone Company of Kentucky 100%	General Telephone Company of Wisconsin 100%	Pee Dee Telephone Company, Inc. 100%	Telecommunications Co. Ltd. 100%	
		Princeton Telephone Company 100%	West Indian Telephone Company 100%	
		The Southwestern States Telephone Company 100%		
		Four States Telephone Co. 100%		

TELEPHONE SUBSIDIARIES

BEST COPY AVAILABLE
from the original bound volume

[illegible]

MANUFACTURING, SALES, RESEARCH, AND OTHER SUBSIDIARIES

ISSUED BY:

GT&E SERVICE CORPORATION
GENERAL ACCOUNTING DEPARTMENT

from the original bound volume

INCUMBENCY CERTIFICATE
OFFICERS OF
GT&E COMMUNICATIONS INC.

I, Daniel McKenna, Assistant Secretary of GT&E Communications Inc., a corporation organized and existing under the laws of the state of Delaware, Do **HEREBY CERTIFY** that each of the following named persons occupies the office in said Corporation shown opposite his name:

James J. Clerkin, Jr.	President
George H. Gage	Vice President
Wenton F. Stewart	Vice President and General Manager
H. H. Howlett	Secretary
R. F. Hardy	Treasurer
Lemuel D. Bishop	Controller
Daniel McKenna	Assistant Secretary

I **FURTHER CERTIFY** that each of the persons aforesaid was duly elected unto the designated office by and at a meeting of the Board of Directors of said Corporation, has duly qualified, and is now the occupant of such office with all of the powers and duties normally associated with said office.

WITNESS my signature and the seal of said Corporation this 21st day of May, 1968.

/s/ DANIEL MCKENNA
Assistant Secretary

* * * * *

F. The following statement sets forth all agreements, written or oral, existing between the Applicant and any other person, firm, group or corporation with respect to the proposed franchise and its proposed operation: (Attach additional sheets if required.)
None, except that General Telephone & Electronics Corporation has agreed to advance the funds necessary for the construction and operation of the pro-

posed system, and General Telephone Company of Illinois will furnish distribution facilities pursuant to tariff number 1 Section 34 filed by it with the Illinois Commerce Commission. See attached letters of commitment marked Exhibits C & D.

- G. The proposed address of the office operating any franchise resulting from this application is:

Address No local office established at this date

City

State

See: GT&E Communications Inc.

Eastern Region Office

1504 Directors Row, Fort Wayne, Indiana
46808

- H. The proposed address of the service department of said applicant is:

Address None established at this date

City

State

3. The Applicant proposes to provide service initially to the following parts of the City of Bloomington and the Town of Normal. (Describe or attach map showing initial service areas.) See attached Exhibit E

GENERAL TELEPHONE & ELECTRONICS CORPORATION
730 THIRD AVENUE, NEW YORK, N. Y. 10017

TELEPHONE AREA CODE 212 551-1000

May 24, 1968

City Council
City of Bloomington
Bloomington, Illinois

Gentlemen:

This is to advise you that General Telephone & Electronics Corporation, as the parent corporation of GT&E Communications Inc., will advance to GT&E Communications

Inc. the funds required to construct a Cable TV system to serve Bloomington and Normal, Illinois. The funds will be provided, if GT&E Communications Inc. is awarded the franchise to provide Cable TV service to these two communities.

Very truly yours,

/s/ R. F. HARDY

Richard F. Hardy

Treasurer

RFH/hf

If the proposed initial service area is other than the area included within the corporate limits of the City of Bloomington and the Town of Normal, attach a proposed schedule of system extension to include all such area.

4. The Applicant proposes the following TV and other channels for inclusion in the initial system: (Pursuant to FCC approval)

Channel 19	WIRL	Peoria
Channel 25	WEEK	Peoria
Channel 31	WMBD	Peoria
Channel 3	WCIA	Champaign
Channel 33	WCHU	Champaign
Channel 12	WILL	Urbana
Channel 17	WAND	Decatur
Channel ..	Local time, weather and local origination Broadband FM radio (15 to 20 stations)	

5. The Applicant proposes to add the following TV and other channels on the dates shown: (Pursuant to FCC approval)

Channel 20	WICS	Springfield
Channel 9	WGN	Chicago (Note 1)
Channel 32	WFLD	Chicago (Note 1)
Channel 43	WGN-B	Bloomington (Proposed station) (Note 2)

Note 1: Dates for inclusion of Chicago channels contingent upon Federal Communications Commission approval and licensing of microwave transmission

Note 2: Dates for inclusion of proposed Channel 43 contingent upon commencement of broadcasting

6. The Applicant proposes the following as the maximum fees to be charged for the first two years after the Applicant shall commence operation:

Service Connection Charge at each Building

First Connection \$10.00 (Ten Dollars and no Cents)
(TV o

Additional Connections \$5.00 (Five Dollars and no Cents)

Additional FM Connections \$5.00 (Five Dollars and no Cents)

Monthly Charge at each Building

First Connection \$5.00 (Five Dollars and no Cents)
(TV o

Additional TV Connections \$1.00 (One Dollars and no Cents)

Additional FM Connections \$1.00 (One Dollars and no Cents)

Other Charges (Specify)

Reconnections \$5.00

Relocations cost + \$5.00 minimum

Multi-unit rates (See attached exhibit) (F)

All monthly charges discounted 10% when prepaid annually.

7. The following items have been attached to this application:

- a. A certified check in the amount of \$250 made payable to the City of Bloomington, Illinois, constituting a filing fee.
- b. A certified check in the amount of \$250 made payable to the Town of Normal, Illinois, constituting a filing fee.
- c. A Bid Bond or Certified Check in lieu thereof, in the amount of \$20,000 made payable to the City of Bloomington, Illinois.
- d. A Bid Bond or Certified Check in lieu thereof, in the amount of \$20,000 made payable to the Town of Normal, Illinois.
- e. Written evidence from a recognized lending or funding agency addressed to the Applicant and the Bloomington City Council and the Normal Board of Trustees advising that said lending or funding agency has analyzed the Applicant's financial ability and that said agency has agreed to make the required funds available to the Applicant for construction of the proposed system if said Applicant is awarded the franchise.
- f. If Applicant is a corporation, a certified copy of the financial statement of said corporation for the last available fiscal year, together with a certified copy of a resolution from the corporate Board of Directors authorizing the expenditure of such funds as are required to build the proposed system.

I, the undersigned Applicant, certify that the above statements and attachments are complete and correct to the best of my knowledge and belief:

ATTEST:

By LOWELL E. THOMAS
Title Eastern Region Manager

Applicant GT&E Communi-
cations Inc.

/s/ WENTON F. STEWART

By Wenton F. Stewart
Title Vice President
General Manager

State of Indiana
County of Allen

Subscribed and sworn to before me this 27th day of May
1968

/s/ (Illegible Signature)
Notary Public

My Commission expires 18 December 1971

GT&E COMMUNICATIONS INC.
CABLE TV
MULTI-UNIT RATES
FOR BLOOMINGTON-NORMAL

Multi-unit rates are applicable to apartments, hotels, and motels only if the charges are paid on a bulk billing basis by the landlord or owner.

APARTMENTS (two or more apartments per building)	
Installation charge	\$ none
Monthly service charge	
1st apartment	5.00
each additional apartment	2.50

HOTEL—MOTEL

Installation charge	\$ time and material
Monthly service charge	
1st unit	5.00
each additional unit	1.00

Filing Fees

City of Bloomington, Illinois — Check No. 1903 — \$250.00
 Town of Normal, Illinois — Check No. 1904 — \$250.00

RESOLUTIONS

RESOLVED: That all previous contracts, agreements, etc., executed by Mr. Wenton F. Stewart in his capacity as General Manager of this Corporation be and they are hereby ratified, confirmed and approved in all respects.

RESOLVED FURTHER: That until further orders of the Board, the President or any Vice President of the Corporation acting jointly, or the President or any Vice President of the Corporation acting jointly with the Secretary or Treasurer of the Corporation, be and they are hereby authorized to sign contracts in the ordinary course of business.

RESOLVED FURTHER: That the Vice President and General Manager of the Corporation be and he is hereby specifically authorized on behalf of the Corporation to sign singly and alone any contracts, agreements, etc., with regard to the following:

1. Ordinance (franchise) acceptance letters.
2. Business office letters.
3. Construction contracts not to exceed \$100,000 each.
4. Cable distribution system contracts.
5. Pole attachment agreements.
6. Right-of-way agreements not to exceed \$10,000 each.
7. Employee contracts.

I, DANIEL McKENNA, Assistant Secretary of GT&E COMMUNICATIONS INC., Do HEREBY CERTIFY that the foregoing is a true and complete copy of resolutions duly adopted at a meeting of the Board of Directors of said Corporation duly held on the 17th day of May, 1966, a quorum being present and acting throughout and that said resolutions are still in full force and effect.

IN WITNESS WHEREOF I have hereunto set my hand and the seal of said Corporation this 21st day of May, 1968.

/s/ DANIEL McKENNA
Assistant Secretary

GT&E COMMUNICATIONS INC.

Financial Statements as of December 31, 1967

Together with
Auditors' Report

Arthur Andersen & Co.
New York, N. Y.

ARTHUR ANDERSEN & Co.
NEW YORK, N. Y.

To the Board of Directors of
GT&E Communications Inc.:

We have examined the balance sheet of GT&E Communications Inc. (a Delaware corporation and a wholly owned subsidiary of General Telephone & Electronics Corporation) as of December 31, 1967, and the related statement of income (loss) and retained earnings (deficit) for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the financial statements referred to above present fairly the financial position of GT&E Communications Inc. as of December 31, 1967, and the results of its operations for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

/s/ Arthur Andersen & Co.

New York, N. Y.
February 8, 1968.

GT&E COMMUNICATIONS INC.

BALANCE SHEET—DECEMBER 31, 1967

ASSETS

PROPERTY, PLANT AND EQUIPMENT, at cost		\$3,695,514
Less—Accumulated depreciation and amortization		(655,032)
		<u>\$3,040,482</u>
CURRENT ASSETS:		
Cash		\$ 128,364
Accounts receivable—		
Affiliates (Note 1)	\$ 42,464	
Other	67,630	
	<u>\$110,094</u>	
Less—Allowance for uncollectible accounts	9,621	100,473
	<u>9,621</u>	<u>\$ 228,837</u>
Total current assets		
		<u>\$ 228,837</u>
OTHER ASSETS:		
Franchise costs (less accumulated amortization of \$27,350)		\$ 552,373
Other		86,617
		<u>\$3,908,309</u>

The accompanying notes are an integral part of these financial statements.

GT&E COMMUNICATIONS INC.

BALANCE SHEET—DECEMBER 31, 1967

STOCKHOLDER'S EQUITY AND LIABILITIES

STOCKHOLDER'S EQUITY:

Common stock, no par value; authorized and outstanding 250 shares	\$ 1,000
Paid-in capital (no change during year)	2,811,350
Retained earnings (deficit) (Note 2)	(2,321,740)
	<hr/>
	\$ 490,610
	<hr/>

DEMAND NOTES PAYABLE TO GENERAL TELE-
PHONE & ELECTRONICS CORPORATION
(Parent Company)

\$2,966,000

CURRENT LIABILITIES:

Accounts payable—		
Affiliates	\$143,672	
Other	111,614	\$ 255,286
	<hr/>	
Accrued interest payable		40,507
Other accrued liabilities		73,767
		<hr/>
Total current liabilities		\$ 369,560
		<hr/>

DEFERRED CREDITS:

Investment tax credit (Note 1)	\$ 64,878	
Other	17,261	\$ 82,139
	<hr/>	
		\$3,908,309
		<hr/>

The accompanying notes are an integral part of these
financial statements.

GT&E COMMUNICATIONS INC.

STATEMENT OF INCOME (LOSS)
AND RETAINED EARNINGS (DEFICIT)
FOR THE YEAR ENDED DECEMBER 31, 1967

OPERATING REVENUES:

Service	\$ 695,565
Connection	26,129
Less—Provision for uncollectible accounts	(10,270)
Total operating revenues	<u>\$ 711,424</u>

OPERATING EXPENSES:

General office expenses	\$ 580,669
System administrative expenses	519,780
System operating expenses	492,482
Depreciation and amortization	374,864
Total operating expenses	<u>\$1,967,795</u>
Total operating income (loss)	(\$1,256,371)
INTEREST CHARGES	98,403
OTHER DEDUCTIONS, net	3,468
Net income (loss)	<u>(\$1,358,242)</u>
RETAINED EARNINGS (DEFICIT), December 31, 1966	<u>(963,498)</u>
RETAINED EARNINGS (DEFICIT), December 31, 1967	<u>(\$2,321,740)</u>

The accompanying notes are an integral part of these
financial statements.

GT&E COMMUNICATIONS INC.
Notes to Financial Statements
December 31, 1967

- (1) The Company's parent company, General Telephone & Electronics Corporation, has agreed to pay the Company for the use of the Company's accumulated investment tax credit in filing a consolidated Federal income tax return. Such benefit in 1967 of \$42,464 has been deferred in the accompanying statements.

The Company takes the accumulated investment credit into income over the estimated service lives of the applicable property additions. The amortization of the investment credit reduced net loss in 1967 by \$4,978.

- (2) At December 31, 1967, the Company has on a separate return basis, an accumulated operating loss carry-forward for Federal income tax purposes of approximately \$1,958,000. Such loss has been utilized by the parent company in filing a consolidated Federal income tax return and the benefit arising therefrom, approximately \$937,000, will be available to the Company to the extent that it would be available on a separate return basis.

General Exhibit 10-A
Report on
CATV Franchise Applications
Prepared for the
City of Bloomington, Illinois
and the
Town of Normal, Illinois
J. C. BARNARD
and Associates

Consulting Communications Engineers
10121 Manchester Road, St. Louis, Missouri 63122
Telephone: Area Code 314 Yorktown 62116

The attached "Franchise Proposal Check List" provides a quick comparison between the proposals and the provisions of Ordinance Number 1968-27 of the City of Bloomington and Ordinance Number 715 of the Town of Normal.

As can be seen from this check list, the proposal of the Bloomington-Normal Perfect Picture Company fails to meet the requirements of the subject ordinances in several substantial matters.

Cover letter received from Bloomington-Normal Perfect Picture Company with application for CATV franchise asked that the letter be included as part of the application.

Certain portions of this cover letter seek to obtain franchise and operate system in a manner contravening, in substantial manner, the provisions of the ordinances under which the application was filed.

The first sentence on Page 3 of subject letter is a statement—the net effect of which is to completely rescind Section 7 of the existing Ordinance. Granting of a franchise with this statement included as one of the conditions permits the applicant to accept the franchise without any obligation to attempt to meet the time of performance es-

tablished by the subject ordinances. Granting of the requested changes would in fact permit this applicant to accept the franchise award and not actually construct any system during the 15 year life of the grant. Inclusion of the delays requested would result in delay in construction by at least many months with resultant lack of service to the residents and loss of revenue to the municipalities.

The apparent intent of this applicant is clarified by the first sentence of the second paragraph on Page 3 of said letter. There, this applicant has indicated that, despite the provisions of Section 7(a) of the Ordinance, a request for waiver to the Federal Communications Commission will be filed within 90 days in lieu of the 30 days established by the ordinance.

The last line on the first page of the letter from the Economy Finance Corporation indicates that adequate financing commitment for this applicant has not been made within the requirements of the subject ordinances.

Maps included in the "TV Factbook" and the "CATV & Station Coverage Atlas" published by Television Digest, Incorporated, Washington, D. C. both indicate that the Grade B contour of WCHU Channel 33, Champaign, covers a portion of the City of Bloomington. This applicant does not propose to include this channel despite the requirements of Section 8(i) of the subject ordinances.

Any claims to lack of financial viability for a system without distant stations would tend to be refuted by the agreement on the part of the other two applicants to concur with the time requirements of the subject ordinances.

The only way that any further consideration could be given to this application would be to reject all proposals, amend the enabling ordinance as requested by Bloomington-Normal Perfect Picture Company and request new proposals on the basis of the amended ordinance. Under these circumstances, we recommend that the proposal of the

Bloomington-Normal Perfect Picture Company be rejected as not responsive to the request for proposals.

The application from the Telecable Corporation fails to meet the requirements of the subject ordinances in one substantial matter. The cover letter attached to the Telecable application places a condition on its bid making same subject to negotiation of pole attachment agreements with the local telephone and electric utilities at reasonable rental rates. Section 4(i) of the subject ordinances clearly places the responsibility for this matter on the Franchisee and it does not seem advisable for the municipalities to become a party in this matter. If the franchise is awarded to the Telecable Corporation and excessive delays are experienced in securing pole permits caused by circumstances beyond the control on the Franchisee, Section 7(d) of subject ordinances provides for extension of certain time limits at the discretion of the respective Councils.

This appears to be adequate relief for the pole attachment situation. Therefore, said application should be rejected.

The proposal received from GT&E Communications appears to meet all requirements of Ordinance Number 1968-27 of the City of Bloomington and Ordinance Number 915 of the Town of Normal. Therefore, we recommend award of the franchise to GT&E Communications.

This award will enable the residents of Bloomington and Normal to purchase CATV service at the earliest practicable date if they so desire, will generate a minimum of approximately \$7000 per year in franchise and personal property taxes and will provide the inhabitants with distant signal service as soon as the FCC provides authorization for same.

A further minor advantage of the GT&E Communications proposal is that the subscribers to the service may pay the lowest of the three proposed rates if they choose to exercise the annual payment discount option.



FRANCHISE PROPOSAL CHECK LIST

BLOOMINGTON-
NORMAL
PERFECT
PICTURE CO.GT&E
COMMUNICATIONS
INC.

TELECCABLE

OF PERFORMANCE

SECURE PERMITS
COMMENCE CONSTRUCTION
COMMENCE OPERATION
COMPLETE INITIAL AREANO
NO
NO
NONO
NO
NO
NO

INSTRUCTION AND OPERATIONAL STANDARDS

HANDBOOK 81
24 HOUR PER DAY
BASED AND CHARACTERISTICS
ECHO EFFECTS
SIGNAL LEVEL
SPURIOUS RADIATION
NO COLOR DEGRADATION
LOCAL STATIONS
INTERFERENCE

NO-MINOR

MINOR

ES TO TOWN

SERVICE WITHOUT CHARGE
EMERGENCY ALERT
FRANCHISE TAXNO
NO
NONO
NO
NO

BID

BID BOND
PERFORMANCE BONDNO
NONO
NO

ICATION FORM

COMPLETE
BOND OR CHECK
FILING FEE
FINANCING ASSURANCENO
NO
NONO
NO
NO

ES

SERVICE CONNECTION

FIRST \$10.00
ADDITIONAL TV 5.00 D
ADDITIONAL FM 2.50 D
APARTMENT
HOTEL-HOTEL
FIRST 4.70
ADDITIONAL TV 1.50
ADDITIONAL FM 1.50 E
APARTMENT HOUSE FIRST
ADDITIONAL
HOTEL-HOTEL FIRST
EACH NEXT 29
EACH NEXT 20
EACH ADDITIONAL
NOT SPEC.\$10.00 A
5.00
5.00
NONE
T&N 5.00 F
11.00 F
11.00 F
11.00 F
11.00 F
11.00 F
11.00 F
5.00 MIN.\$9.95 B-C
5.00
5.00
5.00
T&N 4.95
1.25
1.25
1.25
2.50
4.95
1.25
1.25
1.00
5.00

MONTHLY

LOCATION

A WAIVED BEFORE THE OFFICIAL IN-SERVICE DATE
B SPECIAL COLLEGE STUDENT RATE \$5.00
C NO SCC FOR LIMITED PERIOD AROUND "TURN-ON" TIME.
D NO CHARGE AT TIME OF FIRST CONNECTION
E 50.7% FOR ADDITIONAL FM OVER 1ST FM
F SUBJECT TO 10% DISCOUNT FOR ANNUAL PAYMENTTHESE PROPOSALS DID NOT SPECIFICALLY MENTION THE INTENTION OF INCLUDING
DU CHANNEL 43 BLOOMINGTON ON A "WHEN ON THE AIR" BASIS. THIS ITEM IS OF
INDEFINITE NATURE AND THEREFORE SHOULD NOT BE GIVEN ANY SERIOUS CONSIDER-
ION AT THIS TIME.

BEST COPY AVAILABLE

from the original bound volume

<u>CHANNELS</u>		<u>LOCATION</u>	<u>NETWORK</u>	<u>BLOOMINGTON- NORMAL PERFECT PICTURE CO.</u>	<u>GT&E COMMUNICATION INC.</u>	<u>TELEGADE</u>
NCIA	3	CHAMPAIGN	CBS	✓	✓	✓
WGN-TV	9	CHICAGO	IND.	✓	MW	-MW
KPLR-TV	11	ST. LOUIS	IND.	MW	N.P.	N.P.
WTTW	11	CHICAGO	EDUC.	✓	N.P.	N.P.
WILL-TV	12	URBANA	EDUC.	✓	✓	✓
WAND	17	DECATUR	ABC	✓	✓	✓
WIRL-TV	19	PEORIA	ABC	✓	✓	✓
WICS	20	SPRINGFIELD	NBC	✓	✓	✓
WEEK	25	PEORIA	NBC	✓	✓	✓
WMBD-TV	31	PEORIA	CBS	✓	✓	✓
WFLD	32	CHICAGO	IND.	✓	MW	-MW
WCHU	33	CHAMPAIGN	NBC	NO	✓	✓
WQND	43	BLOOMINGTON	BPCT	MINOR*	✓	MINOR*
EMERGENCY		LOCAL		✓	✓	✓
TIME-WEATHER		LOCAL		✓	✓	✓
NEWS		LOCAL		✓	✓	✓
FM		AS AVAILABLE		✓	✓	✓

* THESE PROPOSALS DID NOT SPECIFICALLY MENTION THE INTENTION OF INCLUDING WQND CHANNEL 43 BLOOMINGTON ON A "WHEN ON THE AIR" BASIS. THIS ITEM IS OF AN INDEFINITE NATURE AND THEREFORE SHOULD NOT BE GIVEN ANY SERIOUS CONSIDERATION AT THIS TIME.

** NO INDICATION THAT MICROWAVE RELAY WOULD BE REQUIRED FOR THESE CHANNELS. THE DISTANCES INVOLVED STRONGLY SUGGEST THAT THIS REQUIREMENT DOES IN FACT EXIST.

*** INCLUSION NOT SIGNIFICANT SINCE PROGRAMS ARE PROVIDED BY WCHU CHANNEL 33 WHICH OPERATES AS A SATELLITE OF WICS.

N.P. NOT PROVIDED WHICH IS A FRANCHISEE PREROGATIVE.

BEST COPY AVAILABLE

from the original bound volume

General Exhibit 11-A

MEMORANDUM

To: Mayor and Town Council, Town of Normal
Mayor and City Council, City of Bloomington

From: Town Administrator and Town Attorney, Town of Normal

City Manager and Corporation Counsel, City of Bloomington

SUBJECT: CATV

DATE: August 2, 1968

BACKGROUND—Last year the Bloomington City Council and the Town of Normal Board of Trustees agreed to cooperate on the possible awarding of a joint CATV franchise to a single firm. As a result of this, the Councils jointly hired the engineering firm of J. C. Barnard & Associates to work with the Corporation Counsel and City Manager of the City of Bloomington and the Attorney and Administrator of the Town of Normal in preparing a franchise ordinance proposal and bidding procedures for a CATV franchise. The Consultant assisted the attorneys in preparing such an ordinance which was deemed to be in the best interest of the citizens of the Town of Normal and the City of Bloomington and the ordinance was adopted by both Councils. Included in the ordinance were bonding and performance requirements that applicants would be required to meet. Following adoption of the ordinance by both Councils a joint CATV franchise bid was opened May 29, 1968, at the Bloomington City Hall for Bloomington and Normal. The communities then had until August 29, 1968 in which to evaluate the applicant's qualifications and their bids. Copies of the bids were distributed to the members of the respective city Councils, to the press and to each of the bidders. An additional copy went to J. C. Barnard & Associates who was asked to review the bids and to make its

recommendation to the Manager, Administrator and Attorneys. A copy of the consultant's recommendation is included with this report.

REVIEW AND RECOMMENDATIONS—The City Manager, Town Administrator and Attorneys of the municipalities met recently with representatives from GT&E Communications Inc., Bloomington-Normal Perfect Picture Company and had a telephone conversation with a third applicant, Tele-Cable Corporation. These meetings were held separately with each of the applicants. The opportunity was afforded to each applicant to explain any portion of his bid and to ask questions of the municipal representatives. The city officials also had an opportunity to review portions of the bid proposals with the applicant concerned and to ask questions of the applicants.

The Consultant's report correctly states information about each of the bid proposals. The Bloomington-Normal Perfect Picture Company did not meet the requirements outlined in the ordinance in that it did not agree to proceed with the installation of a CATV system nor did it offer to put up the required performance bond until assurance is received from the Federal Communications Commission that distant stations can be received. This is a complete departure from the approach outlined in our ordinance, and to consider it would require an ordinance change. In preparing the ordinance this was specifically covered to require providing the performance bond and also requiring immediate steps to be taken to begin the installation of a CATV system in Bloomington and Normal with certain deadlines established. If the Councils of Bloomington and Normal wish to approve the requested ordinance changes the Manager, Administrator, and two municipal attorneys concur in the Consultant's recommendation that all bids be rejected. All those interested in bidding in the manner proposed by the Bloomington-Normal Perfect Picture Company would then have the same opportunity to bid. This might open the field to additional bidders but also it might

result in the loss of the present applicants as they would not be required to resubmit. Unless a different approach is adopted Bloomington-Normal Perfect Pictures must be eliminated from consideration.

As to the two remaining bids, it appears that the proposed rate schedule of GT&E gives a slight overall advantage. There is a 5¢ differential in the single connection monthly base rate in favor of TeleCable. However, GT&E offers considerably lower monthly rates for each additional connection to the same premises, and offers 10% reduction on advance payment basis. The GT&E offer has no reservation on a pole attachment agreement, whereas there is a slight question on TeleCable. GT&E has submitted a complete initial layout for both towns, whereas TeleCable has not yet performed the same.

A decision by the Federal Communications Commission concerning Section 214 of the Communications Act regarding additional procedures on the part of telephone companies entering the CATV business had been rendered subsequent to our taking bids on May 29, 1968. In order to clear this matter we questioned representatives of GT&E Communications Inc. as to whether the recent "214" decision by the FCC did in any way affect the validity of their bid or ability to perform within the time limitations of our ordinance. They stated that this decision did not affect their bid or performance. Therefore, if GT&E Communications Inc. accepts the franchise we would expect to hold bid or performance. Therefore, if GT&E Communications Inc. accepts the franchise we would expect to hold them strictly to the performance deadlines.

In summary GT&E Communications Inc. has the most favorable bid and its acceptance would result in CATV service being available to the public at the earliest possible time.

In view of the Consultant's report and with a deadline of August 29 for awarding of a CATV franchise under the

ordinance and bidding proposal, our recommendations are as follows:

- A. That the Town of Normal Board of Trustees at its meeting on August 5, 1968 authorize granting of a CATV franchise to the GT&E Communications Inc. and the Attorney be instructed to prepare the CATV franchise ordinance, subject to the Bloomington City Council taking similar action.
- B. That the Bloomington City Council at its meeting of August 12, 1968 authorize granting of a CATV franchise to GT&E Communications Inc., and adopt the CATV franchise ordinance as prepared by the Bloomington corporation counsel.
- C. That the Town of Normal Board of Trustees at its meeting of August 19, 1968 adopt the CATV franchise ordinance as prepared by the Normal Town Attorney.

Respectfully submitted,

For the City of Bloomington:

/s/ S. W. McALLISTER
S. W. McAllister, *City Manager*

JAMES R. DePEW, *Corporation
Counsel*

For the Town of Normal:

/s/ GORDON B. JAEGER
Gordon B. Jaeger, *Administrator*

ROBERT FLEMING, *Town Attorney*

General Exhibit 12
WESTERN UNION TELEGRAM

1968 AUG 5 PM 1 36

CT NORFOLK VIR 5 109P EDT—
TOWN ADMINISTRATOR—
BLOOMINGTON-NORMAL ILL—
SUBJ: CATV FRANCHISE

TELECABLE CORPORATION DOES NOT FEEL THAT ACCEPTANCE OF THE GT&E BID WOULD PROVIDE THE MOST PROMPT AND ECONOMICAL CATV SERVICE TO THE CITIZENS OF NORMAL AND BLOOMINGTON AND SUBMIT FOR CONSIDERATION BY THE COUNCILS CONCERNING THE REPORTS OF J. C. BARNARD AND ASSOCIATES AND THE MEMORANDUM FROM THE TOWN ADMINISTRATORS.

—THE BARNARD REPORT ALMOST NEGLECTED TO COMMENT AT ALL ON THE SUBSCRIBER RATES PROPOSED BY THE BIDDERS—A QUESTION OF VITAL INTEREST TO POTENTIAL SUBSCRIBERS. THE MEMORANDUM STATES THAT THE GT&E OFFER OF A 10% DISCOUNT FOR A FULL YEAR'S ADVANCE PAYMENT IS A REAL ADVANTAGE. TELECABLE NOW OFFERS THIS TYPE DISCOUNT IN SEVERAL OF ITS SYSTEMS BUT OUR EXPERIENCE HAS BEEN THAT FEW SUBSCRIBERS ARE WILLING TO TAKE ADVANTAGE OF IT. A CHECK OF THESE LOCATIONS REVEALS THAT NOT MORE THAN 3% OF THE SUBSCRIBERS IN ANY OF THE AREAS HAVE TAKEN ADVANTAGE OF THIS DISCOUNT. THE MEMORANDUM ALSO MENTIONS GT&E'S LOWER RATE ON ADDITIONAL SETS. ARB ESTIMATES THAT ON A NATIONAL BASIS ONLY 28% OF HOMES HAVE SECONDARY TV SETS. TELECABLE'S EXPERIENCE IS THAT ONLY ABOUT 9% OF OUR CATV REVENUES COME FROM ADDITIONAL SETS AND COMMERCIAL ACCOUNTS COMBINED. SO WHILE THE GT&E BID MAY OFFER SOME ADVANTAGE TO A RELATIVELY SMALL PERCENTAGE OF THE CATV SUBSCRIBERS TELECABLE'S BID WILL CERTAINLY OFFER THE MOST ECONOMICAL SERVICE TO THE MAJORITY OF THE POTENTIAL SUBSCRIBERS. IN VIEW OF THE ABOVE TELECABLE RATES TO THE SUBSCRIBER ARE, IN FACT, LOWER THAN GT&E'S.—

NEITHER THE REPORT NOR THE MEMORANDUM MENTIONED TELECABLE'S OFFER TO WAIVE INITIAL INSTALLATION CHARGES WHEN THE SYSTEM IS FIRST ACTIVATED. THIS WOULD RESULT IN SUBSTANTIAL SAVINGS TO SUBSCRIBERS. THIS GT&E DID NOT OFFER.

—THE REPORT AND MEMORANDUM MENTION TELECABLE'S QUALIFICATIONS AS TO POLE ATTACHMENT AGREEMENTS WITH THE TELEPHONE COMPANIES. THE REASON IS OBVIOUS. WITH

GENERAL TELEPHONE COMPANY AS AN UNSUCCESSFUL BIDDER, THEY COULD BE ARBITRARILY UNREASONABLE. TELECABLE HAS NEVER HAD PROBLEMS OF THIS TYPE AND WOULD NOT EXPECT THEM. HOWEVER, TELECABLE COULD NOT BE PUT IN A POSITION OF NOT BEING ABLE TO FULFILL REQUIREMENTS BECAUSE THE PHONE COMPANY WAS BEING UNDULY DIFFICULT. IN A TELEPHONE CONVERSATION TELECABLE ADVISED CITY OFFICIALS THAT IF THE PHONE COMPANY IS UNREASONABLE TELECABLE WOULD PROCEED BY SETTING ITS OWN POLES IF THE CITY WOULD ALLOW—A SITUATION WE HAD INTERPRETED THE ORDINANCE AS NOT ALLOWING.—

TELECABLE ALWAYS BEGINS A DETAILED SYSTEM LAYOUT WITH AN EXTENSIVE AERIAL SIGNAL SURVEY TO LOCATE THE BEST ANTENNA SITE. ONLY AFTER THIS SITE IS LOCATED CAN A DETAILED SYSTEM LAYOUT BEGIN. THE BID FORMS WERE MAILED TO TELECABLE ON MAY 7 AND WERE DUE ON MAY 29. TWENTY TWO DAYS IS HARDLY ADEQUATE TO COMPLETE THE PRELIMINARY SIGNAL SURVEYS AND ENGINEERING FOR THE WHOLE SYSTEM AND ESPECIALLY SO WHEN TELECABLE DID NOT HAVE ACCESS TO TELEPHONE COMPANY STRAND MAPS OF SPECIFIC POLE LINE LOCATIONS. THIS SYSTEM DESIGN IS VERY COSTLY WHEN PERFORMED ON A CRASH BASIS AND IS CUSTOMARILY PERFORMED SUBSEQUENT TO AWARD OF A FRANCHISE AND NOT PRIOR TO AWARD. TELECABLE AGREED TO MEET FULLY THE TIME SCHEDULE FOR THE "INITIAL SERVICE AREA" AND THE TECHNICAL SPECIFICATIONS. THE PERFORMANCE BONDS ARE ADEQUATE TO ASSURE TELECABLE'S PERFORMANCE.—

TELECABLE IS MOST DESIROUS OF PROVIDING CATV SERVICE TO THE BLOOMINGTON-NORMAL RESIDENTS. TELECABLE FEELS ITS BID CERTAINLY OFFERS CATV SERVICE TO THE MAJORITY OF THE SUBSCRIBERS CHEAPER THAN THE GT&E BID. WE OFFER THESE COMMENTS CONSTRUCTIVELY REALIZING FULLY THAT EVALUATION OF THE BIDS HAS NOT BEEN AN EASY TASK FOR CITY ADMINISTRATORS, BUT IN HOPE THAT WE MAY HELP THE COUNCILS MAKE THE DECISION THAT WILL BENEFIT THE MAJORITY OF THE CITIZENS OF BLOOMINGTON-NORMAL.—

COPIES: MAYOR AND TOWN COUNCIL TOWN OF NORMAL ILL.
TOWN ADMINISTRATOR TOWN OF NORMAL, ILL., MAYOR AND
CITY COUNCIL CITY OF BLOOMINGTON ILL., CITY MANAGER CITY
OF BLOOMINGTON, ILL.

—D A PURCELL JR VICE PRESIDENT TELECABLE CORPORATION

General Exhibit 13

DUNN, DUNN, BRADY, GOEBEL, ULBRICH & HAYES

ATTORNEYS AT LAW

600 Peoples Bank Bldg.

P. O. Box 476

Bloomington, Illinois 61701

August 3, 1968

**Mayor, Town of Normal
Members of the Normal Town Council
Gentlemen:**

The matter of CATV service has confronted us since early 1965. You have recently passed an ordinance so that Normal might issue a franchise for CATV service. We agree that after three years of study the time has come to act.

It was stated at the meeting at which this ordinance was considered and passed that changes might be suggested and made in the ordinance at the time a franchise was granted.

Only one firm was willing to bid for the franchise without change. The members of the council should ask why only one firm was willing to bid for the franchise without change.

In our opinion only one applicant can qualify under the present ordinance. This is the General Telephone Company through its subsidiary GT&E Communications, Inc. The other two applicants (Bloomington-Normal Perfect Picture Corporation and TeleCable Corporation of Virginia) each have necessarily proposed changes in the ordinance or special conditions as a part of their bids.

Now the council faces the difficult choice of awarding a valuable and long-term franchise to the only applicant that has not asked for any change in the ordinance, or of

agreeing to amendments in this ordinance and granting a franchise to one of the other applicants.

If you are to choose one of the three, then you must consider the following factors:

	<u>Perfect Picture</u>	<u>TeleCable</u>	<u>General Tel</u>
Local Ownership	Yes	No	Very Little
Local Operation and Supervision	Yes	No	No
Profits Reinvested in Community through Ownership	Most	None	None
Local Free Educa- tional Channel	Yes	No	No
National News	Yes	Yes	No [Yes]
Stock Market Channel	Yes	No	No
Weather-public service- music Channel	Yes	Yes	Yes
Chicago Educational Channel after FCC Approval	Yes	No	No
Local origination	Yes	No	Yes
Monthly Rate to Customer	\$4.70	\$4.95	\$5.00
Emergency Alert System	Yes	Yes	Yes

It would appear from the above that we (Perfect Picture) offer the most complete and attractive services at no added cost to the subscriber. In fact our monthly rates for the first connection are well below the amounts proposed by the others.

We believe that a successful system will be a community asset, but to be a successful system distant (i.e. Chicago) signals must be offered and we have made our bid accordingly.

We feel that the ordinance as now written excludes all but General Telephone and as just one example we point to Section 7 Paragraph (a). This provides that the applicant is required to secure pole attachment agreements within 30 days from the utility companies, and if the telephone company refused to sign such an agreement then we would be in default. Gentlemen, we do not intend to make any commitments which we cannot carry out.

It is inaccurate to say that we have failed to comply with the bond requirements of the ordinance. We are willing to post a bond as required subject to, or conditioned on, our receipt of the FCC waiver. The characterization by the agency that made the recommendation to you appears to give us two strikes for the one reason—our insistence on getting FCC waivers.

We wish to point out that for both TeleCable and ourselves this is a permanent commitment to CATV. In the case of General Telephone Company, if CATV proves unsuccessful it would be possible for the subsidiary to discontinue use of the cable and for the phone company to put it to use in its regular system, but for purposes that will be of no value to the ordinary phone customer. It then becomes possible that the phone customer will end up paying the cost of this cable through even higher rates and with no improvement in service.

Not only do we represent local interest and ownership, but we offer the most extensive services at the least cost to the citizens of Normal. Also for the alert system and local public service channels to be effective, the more subscribers the more effective these services will be.

The understanding of the people is that cable TV means that they will receive Chicago and St. Louis stations, and

this is what they want. It is hard to believe that more than a handful of our citizens will pay \$5.00 per month to receive the same signals they now receive free. We propose to wait until it is possible to bring in the additional and *expected* signals, but then to charge only \$4.70 per month for a service that will include educational TV, a national news and stock market channel, and local news and entertainment origination. Because of our newspaper and radio connections we are the only applicant capable of rendering these local services.

We feel that the delay in waiting for FCC waivers is justified since at this time all franchisees must apply for such waiver. Furthermore, the phone company must wait for FCC approvals above and beyond those needed by non-utilities. Since all phone company applications are presently frozen by the FCC it is conceivable that the phone company could be delayed to the point that they would actually begin service later than Perfect Picture if we are granted the franchise now.

We believe that the character, integrity and record for community service of each applicant is an important consideration in your decision. Undoubtedly the owners of TeleCable and GT&E Communications, Inc., are people of excellent character, but it is unlikely that any of the principal owners would move to this community in the event their company is the successful applicant. In the case of Perfect Picture nearly all of the principal owners are already living here and their records speak for themselves. Among these are Elmo Franklin, Timothy R. Ives, Davis U. Merwin, Loring C. Merwin, P. A. Washburn and John L. [name illegible]. We submit that it would be difficult to find one civic or philanthropic project of a community-wide nature in which one or more of these men have not served. Their records for integrity and for carrying out their commitments to the fullest are a matter of public fact and not a matter for speculation.

On the strength of our rates (the lowest), our proposed services (the most complete and attractive), our local ownership and record of public service, we request that your city attorney be authorized to work with us to make the appropriate changes in this ordinance for adoption at your August 19th meeting, and that a franchise be awarded us at that time.

BLOOMINGTON-NORMAL PERFECT
PICTURE CORP.

By: _____

Richard T. Dunn, its Attorney

do

General Exhibit 14

WESTERN UNION TELEGRAM

DEA784 CTD132
CT NFB050 PDB—NORFOLK VIR 19 1032A EDT—
CITY MANAGER—
CITY OF BLOOMINGTON ILL—
—SUBJ: CATV FRANCHISE

THANK YOU FOR THE COURTESY AND KIND ATTENTION
SHOWN ME AT JOINT MEETING AUG 15.

TELECABLE AGAIN RESPECTFULLY REQUESTS THAT CATV
FRANCHISES BE ASSIGNED TO TELECABLE. WE HAVE
DEMONSTRATED THAT OUR RATES ARE MOST ADVANTAGEOUS
TO ALL RESIDENTS, THAT WE ARE EXPERIENCED, ETHICAL AND
FINANCIALLY RESPONSIBLE.

WE BELIEVE WITHOUT RESERVATION THAT WE WILL BE
RENDERING SERVICE TO THE COMMUNITIES BEFORE ANY OTHER
APPLICANT. TELECABLE WILL SET ITS OWN POLES, WHERE
UNABLE TO CONTRACT FOR USE OF UTILITY COMPANY POLES.
THIS WILL ELIMINATE DELAY. IT MAY PERMIT EARLIER
CONSTRUCTION.

IN ADDITION TO OTHER PROVISIONS PREVIOUSLY FORMALLY
STATED, TELECABLE WILL PROVIDE EMERGENCY INTERRUPT
CAPABILITY FOR CITY AND CIVIL DEFENSE PLUS TWO CABLE
CHANNELS FOR EXCLUSIVE USE OF PUBLIC SCHOOL

ORIGINATIONS WITH CONNECTION TO EVERY SCHOOL. THIS WITHIN 20 CHANNEL CAPACITY SYSTEM PREVIOUSLY OFFERED.

AS EVIDENCE OF OUR CONFIDENCE IN THE PROMPT COMMENCEMENT OF SERVICE TELE-CABLE WILL GUARANTEE PAYMENT OF \$20,000 DOLLARS FRANCHISE FEE FOR THE FIRST YEAR FOLLOWING THE GRANTING OF THE FRANCHISE AND \$25,000 DOLLARS FOR THE SECOND YEAR. BOTH SUMS PAYABLE IN ADVANCE ON THE DATE FRANCHISE IS AWARDED AND ACCEPTED BY TELECABLE. IN EVENT GROSS RECEIPTS RESULT IN HIGHER FRANCHISE FEE, TELECABLE WILL PAY ADDITIONAL AMOUNT. IN EVENT GROSS RECEIPTS DO NOT REACH LEVEL INDICATED BY THIS GUARANTEE, REFUND WILL NOT BE REQUIRED. IN EVENT OF DEFAULT BY TELECABLE, NO REFUND WILL BE REQUIRED.

AFTER CONSULTATION WITH ATTORNEY, TELECABLE STATES WITHOUT QUALIFICATION THAT CONSTRUCTION WILL START IMMEDIATELY IN COMPLETE COMPLIANCE WITH ORDINANCE WHETHER OR NOT ANY TV STATIONS OBJECTS.

IN SUMMARY, TELECABLE DOES NOT FACE POSSIBLE LONG DELAY OF SEC. 214 HEARINGS WHICH MAY BE ENCOUNTERED BY GT&E COMMUNICATIONS; HAS AGREED TO CONSTRUCT IMMEDIATELY WITHOUT CONCERN FOR ANY TV STATION OBJECTION UNDER PROVISIONS OF FCC SECOND REPORT AND ORDERS; GUARANTEES FRANCHISE PAYMENT AS EVIDENCE OF CONFIDENCE AND GOOD FAITH; OFFERS EMERGENCY INTERRUPT AND TWO SCHOOL SYSTEM CHANNELS; OFFERS LOWEST RATES TO SUBSCRIBERS IS READY TO START CONSTRUCTION AND SERVICE AT EARLIEST POSSIBLE DATE; RESPECTFULLY REQUESTS ASSIGNMENT OF FRANCHISES.

TELECABLE RECOMMENDS RANKING OF APPLICANTS AND IN EVENT OF UNACCEPTABLE DELAY AND/OR DEFAULT ON PART OF APPLICANT TO WHOM AWARD FIRST MADE, THAT FRANCHISE BE IMMEDIATELY GRANTED TO SECOND RANKING APPLICANT—

REX A BRADLEY VICE PRESIDENT AND
GENERAL MANAGER TELECABLE CORPORATION NORFOLK
VIRGINIA—

General Exhibit 15**CATV FRANCHISE ORDINANCE No. 1968-69**

AN ORDINANCE GRANTING THE RIGHT, PERMISSION AND AUTHORITY TO GT&E COMMUNICATIONS, INC. TO CONSTRUCT, MAINTAIN AND OPERATE A CATV SYSTEM IN AND ABOUT THE CITY OF BLOOMINGTON, McLEAN COUNTY, ILLINOIS.

WHEREAS, GT&E COMMUNICATIONS, INC., a corporation hereinafter also designated as Grantee, has petitioned the corporate authorities of the City of Bloomington, a municipal corporation of the State of Illinois, hereinafter also designated as Municipality, asking that the right, permission and authority be granted to it by franchise ordinance to erect, maintain and operate a system for the transmission by cable of television, radio and music impulses for sale to the inhabitants of the City of Bloomington; and,

WHEREAS, the Grantee acknowledges that by Ordinance No. 1966-12 of the City of Bloomington it is required to have such proposed franchise prior to operating within the City of Bloomington; and,

WHEREAS, said Grantee did further bid for the permission to obtain such franchise license under the terms of Ordinance No. 1968-27 of the City of Bloomington and was, subsequent to said bidding, accepted by said City as the successful bidder among all others bidding at such time; and

WHEREAS, the Grantee has duly complied with the provisions of said Ordinance No. 1968-27 to the date of this proposed award.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BLOOMINGTON, McLEAN COUNTY, ILLINOIS:

SECTION ONE: That for the mutual and other valuable consideration as herein provided, the right, permission and authority to construct, maintain and operate a system for

the transmission by cable of television, radio and music impulses for sale to the inhabitants of the City of Bloomington, Illinois, is hereby granted in compliance with Ordinance No. 1966-12 and in compliance and subject to the limitations set forth in Ordinance No. 1968-27, both of the City of Bloomington.

SECTION TWO: That this award is given on a non-exclusive basis to GT&E Communications, Inc., a corporation authorized to do business in the State of Illinois. That said award herein made is specifically subject to all of the terms, conditions and requirements of Ordinance No. 1968-27 and that the effective date of this Ordinance shall be the date of its adoption by the City Council of the City of Bloomington.

SECTION THREE: That in addition to the requirements, regulations and restrictions set forth in said Ordinance No. 1968-27 of the City of Bloomington, which is by reference readopted in total as part of this franchise grant as though specifically set forth herein, the said Grantee does agree with the said Municipality that it will not use the facilities of its system in any fashion whatsoever for any purpose other than that specifically referred to herein, being for the transmission by cable of television, radio and music impulses for sale to the inhabitants of said City, and that said transmission shall be available to all and not provided on a restricted basis to any particular group, association, corporation, individual, or other designated segregated collective body without first obtaining written permission from the grantor herein.

SECTION FOUR: By acceptance of this franchise grant consisting of the filing by said Grantee with the Clerk of the Municipality of the necessary papers as required by Section 10 of said Ordinance No. 1968-27 of said City of Bloomington, this franchise grant shall be in full force and effect.

SECTION FIVE: The failure of the Grantee to so accept this Ordinance within fifteen (15) days of its adoption shall be deemed a rejection thereof by Grantee and the rights and privileges herein granted shall, after the expiration of said period of fifteen (15) days, if not so accepted, absolutely cease and determine. All other requirements of Ordinance No. 1968-27 must be met within the time limitations therein set forth or this franchise grant shall likewise cease and determine without the necessity of further action on the part of the City of Bloomington.

SECTION SIX: Grantee shall not be afforded any extension of time under Section 7 of Ordinance No. 1968-27 by reason of a delay occasioned by regulations or requirements arising out of the applicability of Section 214 of the Federal Communications Act to Grantee herein.

SECTION SEVEN: That all the rights and privileges granted by this Ordinance are granted for a period of fifteen (15) years from and after the date of the adoption of this Ordinance as hereinbefore provided, and this franchise shall not be considered or construed as being an exclusive franchise.

SECTION EIGHT: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

APPROVED: /s/ BOB MCGRAW
Mayor

Attest:

/s/ MARGUERITE L. ZOOK
City Clerk

Passed this 23rd day of September, 1968.

Approved this 23rd day of September, 1968.

Recorded this 23rd day of September, 1968.

STATE OF ILLINOIS,
County of McLean,
County of Bloomington, } ss.

I, Gertrude Scott, City Clerk of said City, hereby do certify that the foregoing is a true and complete copy of the original ordinance passed by the concurrence and affirmative vote of a majority of all the members elected to the City Council of said City, at a regular meeting thereof held on the 23rd day of September, A.D., 1968, the vote on the passage of said ordinance having been taken by yeas and nays and entered on the record of the proceedings of said Council.

Witness my hand and seal of said City of Bloomington, this 20th day of June A.D., 1969.

/s/ GERTRUDE SCOTT
City Clerk.

General Exhibit 16

STATE OF ILLINOIS
COUNTY OF MCLEAN
TOWN OF NORMAL

I, Ronald L. Gramley, do hereby certify that I am the duly appointed Clerk of the Incorporated Town of Normal, County and State aforesaid, and that I have charge and custody of the books and records of said Town, including the Minute Book which contains the records of the proceedings at the meetings of the Town Council of said Town, which Town Council is composed of six Trustees, and the President of said Town; that the foregoing is a true and correct copy of Ordinance No. 754, duly adopted by said Town Council at a meeting thereof held on the 16th day of September, 1968; that a quorum was present at said meeting and on the motion to adopt said Ordinance all members present voted aye and none voted nay whereupon said Ordinance was declared duly adopted.

In witness whereof, I have hereunto affixed my signature as Clerk of said Town and the Seal of said Town, of which I have official custody, this 19th day of June, 1969.

/s/ RONALD L. GRAMLEY

Clerk of the Incorporated Town
of Normal, McLean County,
Illinois

Town Seal

CATV FRANCHISE ORDINANCE No. 754

AN ORDINANCE GRANTING THE RIGHT, PERMISSION AND AUTHORITY TO GT&E COMMUNICATIONS, INC. TO CONSTRUCT, MAINTAIN AND OPERATE A CATV SYSTEM IN AND ABOUT THE TOWN OF NORMAL, MCLEAN COUNTY, ILLINOIS.

WHEREAS, GT&E COMMUNICATIONS, INC., a corporation hereinafter also designated as Grantee, has petitioned the corporate authorities of the Town of Normal, a municipal corporation of the State of Illinois, hereinafter also designated as Municipality, asking that the right, permission and authority be granted to it by franchise ordinance to erect, maintain and operate a system for the transmission by cable of television, radio and music impulses for sale to the inhabitants of the Town of Normal; and,

WHEREAS, the Grantee acknowledges that by Ordinance No. 579 of the Town of Normal it is required to have such proposed franchise prior to operating within the Town of Normal; and,

WHEREAS, said Grantee did further bid for the permission to obtain such franchise license under the terms of Ordinance No. 715 of the Town of Normal and was, subsequent to said bidding, accepted by said Town as the successful bidder among all others bidding at such time; and,

WHEREAS, the Grantee has duly complied with the provisions of said Ordinance No. 715 to the date of this proposed award.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF NORMAL, McLEAN COUNTY, ILLINOIS:

SECTION ONE: That for the mutual and other valuable consideration as herein provided, the right, permission and authority to construct, maintain and operate a system for the transmission by cable of television, radio and music impulses for sale to the inhabitants of the Town of Normal, Illinois, is hereby granted in compliance with Ordinance No. 579 and in compliance and subject to the limitations set forth in Ordinance No. 715, both of the Town of Normal.

SECTION TWO: That this award is given on a non-exclusive basis to GT&E Communications, Inc., a corporation authorized to do business in the State of Illinois. That said award herein made is specifically subject to all of the terms, conditions and requirements of Ordinance No. 715 and that the effective date of this Ordinance shall be the date of its adoption by the Town Council of the Town of Normal.

SECTION THREE: That in addition to the requirements, regulations and restrictions set forth in said Ordinance No. 715 of the Town of Normal, which is by reference re-adopted in total as part of this franchise grant as though specifically set forth herein, the said Grantee does agree with the said Municipality that it will not use the facilities of its system in any fashion whatsoever for any purpose other than that specifically referred to herein, being for the transmission by cable of television, radio and music impulses for sale to the inhabitants of said Town, and that said transmission shall be available to all and not provided on a restricted basis to any particular group, association, corporation, individual, or other designated segregated collective body without first obtaining written permission from the grantor herein.

SECTION FOUR: By acceptance of this franchise grant consisting of the filing by said Grantee with the Clerk of

the Municipality of the necessary papers as required by Section 10 of said Ordinance No. 715 of said Town of Normal this franchise grant shall be in full force and effect.

SECTION FIVE: The failure of the Grantee to so accept this Ordinance within fifteen (15) days of its adoption shall be deemed a rejection thereof by Grantee and the rights and privileges herein granted shall, after the expiration of said period of fifteen (15) days, if not so accepted, absolutely cease and determine. All other requirements of Ordinance No. 715 must be met within the time limitation therein set forth or this franchise grant shall likewise cease and determine without the necessity of further action on the part of the Town of Normal.

SECTION SIX: Grantee shall not be afforded any extension of time under Section 7 of Ordinance No. 715 by reason of a delay occasioned by regulations or requirements arising out of the applicability of Section 214 of the Federal Communications Act to Grantee herein.

SECTION SEVEN: That all the rights and privileges granted by this Ordinance are granted for a period of fifteen (15) years from and after the date of the adoption of this Ordinance as hereinbefore provided, and this franchise shall not be considered or construed as being an exclusive franchise.

SECTION EIGHT: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

APPROVED: /s/ CHARLES L. BAUGH
President of the Town Council
of the Town of Normal,
McLean County, Illinois

ATTEST: /s/ RONALD L. GRAMLEY
Town Clerk

The foregoing Ordinance was passed by the Town Council of the Town of Normal, McLean County, Illinois, this 16th day of September, A. D. 1968.

The foregoing Ordinance was approved by the President of the Town Council of the Town of Normal, McLean County, Illinois, this 17th day of September, A. D. 1968.

The foregoing Ordinance was published in The Normalite on the 20th day of September, 1968.

General Exhibit 19

October 3, 1968

Mr. Ben F. Waple, Secretary
Federal Communications Commission
District of Columbia 20554

Attention: Chief, Common Carrier Bureau
Subject Regulatory Bodies-Federal License-Authority to
Construct Wide-spectrum Facilities

Dear Mr. Waple:

Attached is our application requesting authority to construct a wide-spectrum cable facility in the Bloomington-Normal, Illinois, communities.

Please arrange to send all notices, acknowledgements and correspondence regarding this application to Mr. C. E. Munsell, Engineering Director, GT&E Service Corporation, 730 Third Avenue, New York, New York 10017.

Attached is our check in the amount of \$50.00 to cover application fees.

Very truly yours,

D. E. ANDERSON
Operating Vice President

Letter in duplicate
Attachments

GENERAL TELEPHONE COMPANY OF ILLINOIS

(l), (m), (n) STATEMENT OF NEED, ECONOMIC JUSTIFICATION, AND PUBLIC INTEREST FOR PROPOSED PROJECT AND DESCRIPTION OF THE MANNER AND MEANS FOR WHICH COMMUNICATION SERVICES OF A SIMILAR CHARACTER ARE NOW BEING RENDERED:

THERE ARE NO OTHER AVAILABLE FACILITIES IN THE AREA CAPABLE OF PROVIDING THE SERVICE PROPOSED AND OF FILLING THE DEMAND FOR WIDE-SPECTRUM SERVICES. THE APPLICANT KNOWS OF NO OTHER ECONOMICAL OR TECHNICAL MEANS FOR PROVIDING THESE FACILITIES OTHER THAN THE TYPE OF FACILITIES PROPOSED.

(o) PROPOSED TARIFF CHARGES AND REGULATIONS: SERVICE TO BE FURNISHED WILL BE IN ACCORDANCE WITH THE APPLICABLE TARIFF CHARGES AND REGULATIONS.

(p) PROPOSED ACCOUNTING TREATMENT FOR ESTIMATED COST OF FACILITIES:
THE ACCOUNTING TO BE PERFORMED IN CONNECTION WITH THE PROPOSED CONSTRUCTION WILL BE IN ACCORDANCE WITH PART 31 OF THE COMMISSION'S RULES AND REGULATIONS.

LIST OF SUPPORTING EXHIBITS ATTACHED:

EXHIBIT NO. 1 - Community of Bloomington-Normal
Wide-Spectrum Distribution System

EXHIBIT NO. 2 - Estimated Project Cost Details

SIGNED:

GENERAL TELEPHONE COMPANY OF ILLINOIS

(COMPANY)

October 3, 1968

(DATE)

ORIGINAL SIGNED BY

D. E. ANDERSON

ADDRESS:

(SIGNATURE)

OPERATING VICE PRESIDENT

(TITLE)

LETTERED SECTIONS ABOVE AGREE WITH SUBHEADINGS OF 63.01,
FCC RULES AND REGULATIONS.

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EXHIBIT NO. 2
ESTIMATED PROJECT COST DETAILS

	<u>EA/FT.</u>	<u>Material</u>	<u>Labor</u>	<u>Engr.</u>	<u>Total</u>
<u>ACCOUNT 241</u>					
Poles	253	13,465	8,392	1,422	23,279
Anchors	1,115	13,826	13,101	2,219	29,146
D. Guys	1,115	2,252	9,243	1,561	13,056
Total		29,543	30,736	5,202	65,481
<u>ACCOUNT 242.1</u>					
CCG Pilot 73.7	1	305	36	9	350
AGC Pilot 213	1	153	36	9	198
750 J Alfoam	134,000	45,560	16,080	4,020	65,660
500 J Alfoam	28,600	4,862	3,432	858	9,152
412 J Alfoam	767,500	107,450	92,100	23,025	222,575
Amplifiers (Trunk)	143	99,355	5,148	1,258	105,761
Amplifiers (Dist)	424	64,401	9,158	2,239	75,798
Power Supply	31	6,997	670	164	7,831
Equalizers (Therm)	48	2,606	346	84	3,036
Directional Couplers	77	2,064	554	136	2,754
Splitters	418	10,826	3,010	736	14,572
Taps	6,030	69,164	34,733	8,502	112,399
Messenger	668,900	24,749	38,796	9,365	72,910
Total		436,492	204,099	50,405	692,996
<u>ACCOUNT 242.2</u>					
750 J Alfoam	900	306	108	27	441
500 J Alfoam	16,850	2,865	2,022	506	5,393
412 J Alfoam	1,500	210	180	45	435
Amplifiers (Trunk)	8	5,558	288	70	5,916
Equalizers	3	163	22	5	190
Directional Couplers	6	161	43	11	215
Total		9,263	2,663	664	12,590
<u>ACCOUNT 242.3</u>					
750 J Alfoam	11,000	3,740	2,090	550	6,380
500 J Alfoam	16,350	3,761	3,107	818	7,686
412 J Alfoam	93,500	14,025	17,765	4,675	36,465
Amplifiers (Trunk)	16	11,117	576	141	11,834
Amplifiers (Dist)	86	13,063	1,858	454	15,375
Power Supply	3	677	65	16	758
Equalizers (Therm)	5	271	36	9	316
Directional Couplers	4	107	29	7	143
Splitters	56	1,450	403	99	1,952
Taps	470	5,391	2,707	663	8,761
Pedestals	470	13,771	3,079	832	17,682
Total		67,373	31,715	8,264	107,352

Total Route Miles 175

Grand Total \$878,419

Dist to Trunk Ratio 4.2 to 1

Cost per route mile \$5,020

Engineering \$ 64,535

Labor \$269,213

Material \$544,671

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GENERAL TELEPHONE COMPANY OF ILLINOIS
 REQUEST FOR AUTHORITY TO SUPPLEMENT EXISTING FACILITIES
 INVOLVING CONSTRUCTION OF WIDE-SPECTRUM FACILITIES
 ESTIMATED COST EXCEEDING \$250,000 OR
 ESTIMATED ANNUAL RENTAL EXCEEDING \$10,000

TO: OFFICE OF THE SECRETARY FEDERAL COMMUNICATIONS COMMISSION WASHINGTON, D.C. 20554		(this space for FCC use)
(a) NAME AND ADDRESS OF EACH APPLICANT: <u>General Telephone Company of Illinois</u> <u>1312 E. Empire</u> <u>Bloomington, Illinois</u>		
(b) INCORPORATED IN _____ (if different from above address)		
(c) ADDRESS CORRESPONDENCE CONCERNING THIS APPLICATION TO (if different from signing officer): <u>Mr. C. E. Russell, Engineering Director</u> <u>GEN Service Corporation</u> <u>730 Third Avenue</u> <u>New York, New York 10017</u>		
(d) APPLICANT HEREIN <input type="checkbox"/> IS <input checked="" type="checkbox"/> IS NOT		
A CARRIER SUBJECT TO SECTION 214 OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED, THIS APPLICATION IS BEING FILED UNDER PROTEST BY REASON OF THE FACT THAT APPLICANT CONTENDS THAT SECTION 214 OF THE ACT IS NOT APPLICABLE TO THE SUBJECT FACILITIES.		
(e) FACILITIES COVERED BY THIS APPLICATION WILL BE USED TO SUPPLEMENT EXISTING FACILITIES OF THE APPLICANT IN THE AREA PRESENTLY SERVED AND WILL BE USED FOR VOICE, DATA, VIDEO AND/OR OTHER WIDE-SPECTRUM SERVICES.		
(f) (1) FACILITIES FOR WHICH AUTHORITY IS REQUESTED: THE PROPOSED FACILITIES WILL CONNECT A DISTRIBUTION POINT OR POINTS AT WHICH THE APPLICANT RECEIVES SIGNALS TO SERVICE POINTS IN THE COMMUNITY OF <u>Bloomington-Normal, Illinois</u> SEE EXHIBIT 1 ATTACHED THESE FACILITIES ARE: <input type="checkbox"/> EXISTING <input checked="" type="checkbox"/> TO BE CONSTRUCTED AND CONSIST OF COAXIAL CABLE AND RELATED ELECTRONIC AMPLIFIERS, AS SHOWN IN EXHIBIT 1, PLUS ASSOCIATED EQUIPMENT, AND (1) PROVIDE COMMUNICATIONS CHANNELS WITHIN THE VHF FREQUENCY RANGE; (2) THESE SAME FACILITIES ARE CAPABLE OF PROVIDING ADDITIONAL CHANNELS OF COMMUNICATION ONLY BY THE CONSTRUCTION OF ADDITIONAL APPARATUS, EQUIPMENT OR OTHER FACILITIES; (3) NO NEW TYPE OR CLASS OF OFFICE WILL BE ESTABLISHED.		

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GENERAL TELEPHONE COMPANY OF ILLINOIS

(g) OTHER EXISTING FACILITIES BETWEEN THE SAME POINTS, AS SHOWN IN EXHIBIT 1, ARE APPLICANT'S TELEPHONE EXCHANGE FACILITIES.

(h) PRESENT AND ESTIMATED REQUIREMENTS: Twelve VHF CHANNELS, APPLICANT PRESENTLY REQUIRES Twelve VHF CHANNELS, AND IS NOT ABLE TO ESTIMATE FUTURE REQUIREMENTS BEYOND THE PRESENT NEED.

(i) MAP OR SKETCH: SEE ATTACHED EXHIBIT 1.

(k) PROPOSED FACILITIES ☒ ARE TO BE ☐ HAVE ALREADY BEEN
☒ CONSTRUCTED ☐ LEASED ☐ PURCHASED

SUMMARY OF COSTS OF FACILITIES:

Account 241	\$ 65,431
Account 242.1	692,995
Account 242.2	12,590
Account 242.3	107,352
	<hr/>
Total	\$878,419

A detailed cost breakdown of the above accounts is shown in Exhibit No. 2.

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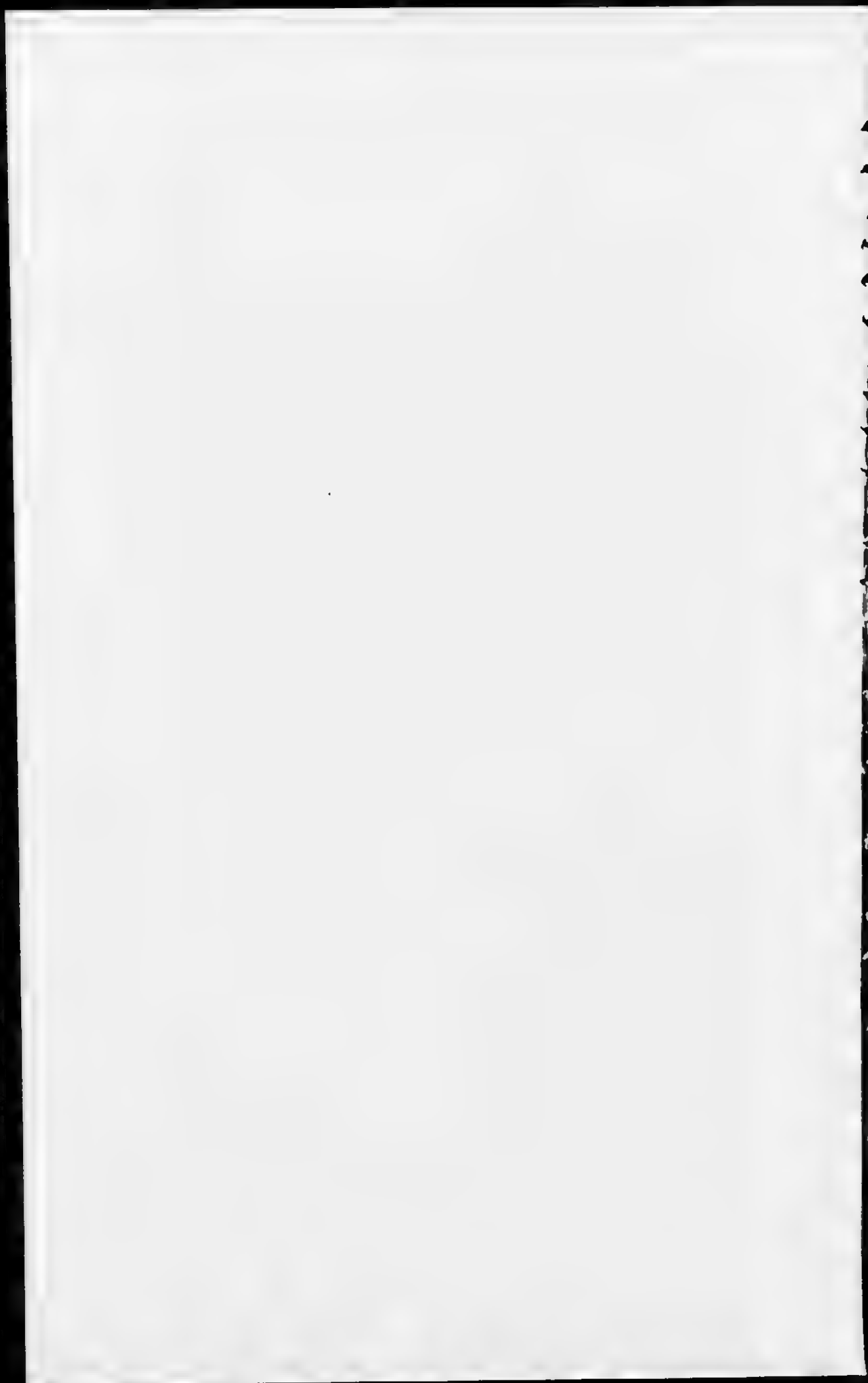
LEGEND

	STATE HIGHWAYS WITH ALLEGED CONTROL
	UNIMPROVED HIGHWAYS
	ILLINOIS HIGHWAYS AND TOLL ROADS
	OTHER RAILROAD AND TIE LINE
	CORPORATE LIMITS (NORMAL)
	GENERAL ROAD LIMITS
	U.S. ROUTE 74
	U.S. ROUTE 66
	U.S. ROUTE 127
	COUNTY HIGHWAYS
	STATE TOLL ROADS
	FEDERAL AID PRIMARY ROAD AND EXTENSION
	ILLINOIS TOLL ROADS AND EXTENSION
	TRUCK
	CENTER OF GRAVITY
	FIRE DEPARTMENT
	AREA OCCUPIED BY ILLINOIS STATE UNIVERSITY AND ILLINOIS WESLEYAN UNIVERSITY
	CORPORATE LIMITS (BLOOMINGTON)
	AMPLIFIER
	HEAD END
	TRUNK CABLE
	DISTRIBUTION CABLE

EXHIBIT 1

COMMUNITY OF BLOOMINGTON — NORMAL
WIDE SPECTRUM DISTRIBUTION SYSTEM





General Exhibit 19a

WESTERN UNION TELEGRAM

1968 OCT 4 PM 4 29

BEN. F. WAPLE, SECRETARY
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

ATTENTION: CHIEF, COMMON CARRIER BUREAU

SUBJECT: REGULATORY BODIES—FEDERAL LICENSE—
AUTHORITY TO CONSTRUCT WIDE-SPECTRUM FACILITIES

THE FOLLOWING IS IN REFERENCE TO OUR APPLICATION
MAILED ON OCTOBER 3, 1968 FOR AUTHORITY TO CONSTRUCT A
WIDE SPECTRUM CABLE FACILITY IN THE BLOOMINGTON AND
NORMAL, ILLINOIS COMMUNITIES.

WE HEREBY REQUEST IN ACCORDANCE WITH PARAGRAPH 63.04
(B) OF THE COMMISSION RULES THAT EMERGENCY ACTION BE
TAKEN IN THE PUBLIC INTEREST TO PROCESS THE APPLICATION
OF GENERAL TELEPHONE COMPANY OF ILLINOIS. GOOD CAUSE
EXISTS REQUIRING SUCH EMERGENCY ACTION.

THE FRANCHISED CATV COMPANY FOR THE BLOOMINGTON-
NORMAL AREA HAS REQUESTED WIDE-SPECTRUM SERVICES ON
THE PROPOSED WIDE-SPECTRUM CABLE PLANT FROM THE
APPLICANT. NO SUCH FACILITIES NOW EXIST. UNDER THE
PROVISIONS OF THE FRANCHISE ORDINANCES OF BLOOMINGTON
AND NORMAL CONSTRUCTION OF FACILITIES MUST BEGIN NO
LATER THAN MARCH 15, 1969 AND 30% OF THE TOTAL AREA OF
THE TWO MUNICIPALITIES MUST BE IN SERVICE BY SEPTEMBER
10, 1969. CONSIDERING THE MINIMUM SUPPLY INTERVAL OF
120 DAYS EXPERIENCED BY YOUR APPLICANT, IT IS ESSENTIAL
THAT EXPEDITED AUTHORIZATION BE SECURED TO THAT THE
NECESSARY EQUIPMENT AND MATERIALS MAY BE ORDERED
PROMPTLY TO INSURE THAT CONSTRUCTION MAY START ON
SCHEDULE. IN THE EVENT THESE TIME PERIODS ARE NOT MET,
APPLICANT'S CATV CUSTOMER STANDS TO LOSE ITS FRANCHISES
TO SERVE BLOOMINGTON AND NORMAL, SINCE A PROVISION IN
THE FRANCHISE ORDINANCE OF EACH MUNICIPALITY STATES
THAT NO EXTENSION OF TIME WILL BE AFFORDED APPLICANT'S
CATV CUSTOMER BY REASON OF DELAY OCCASIONED BY
REGULATIONS OR REQUIREMENTS ARISING OUT OF THE
APPLICABILITY OF SECTION 214 OF THE COMMUNICATIONS ACT.

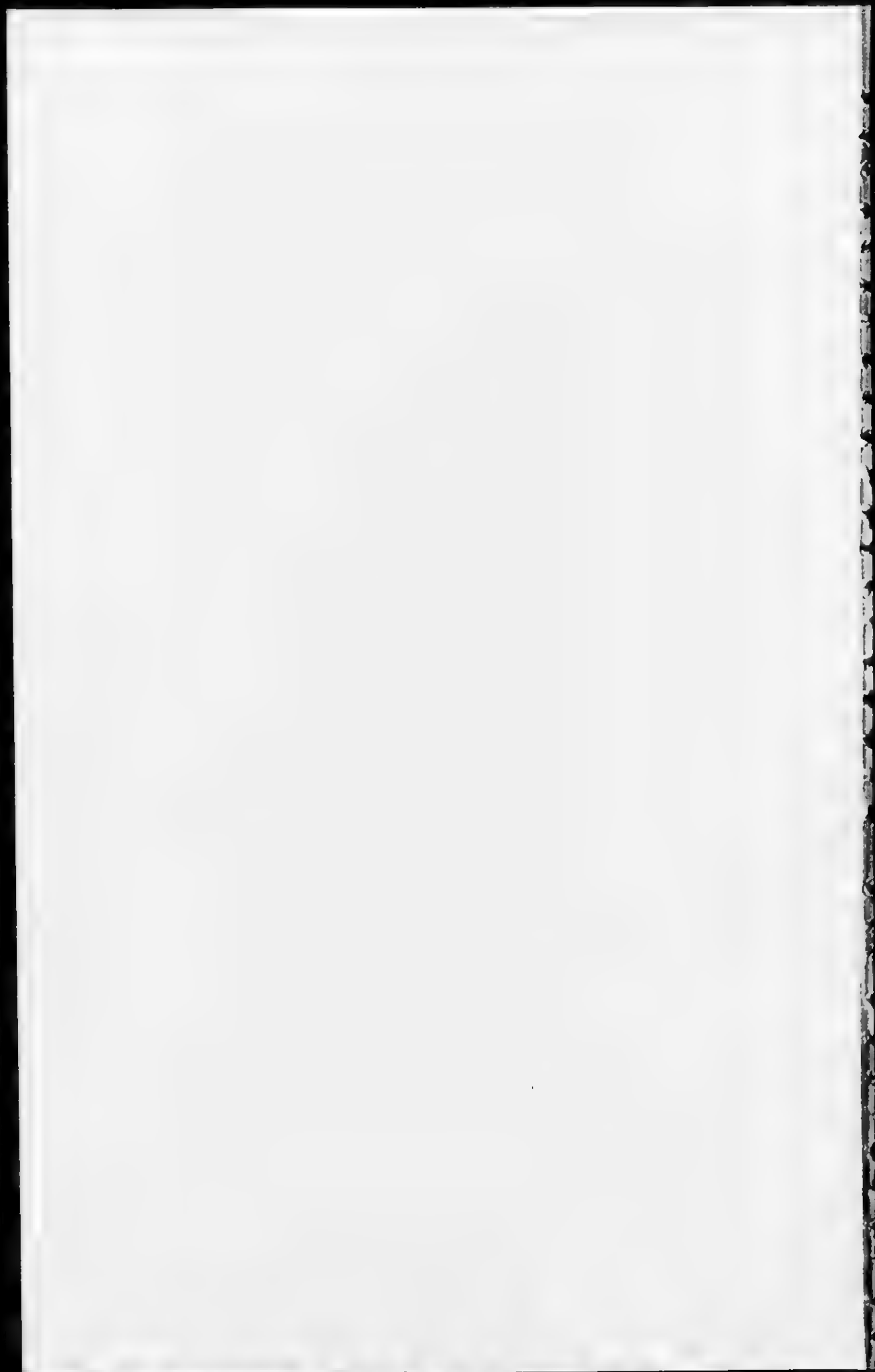
THE TYPE OF FACILITY PROPOSED FOR USE WILL BE COAXIAL
CABLE, ASSOCIATED AMPLIFIERS AND OTHER MISCELLANEOUS
HARDWARE FOR ONE-WAY TRANSMISSION TO COVER 175 ROUTE
MILES. THE PROPOSED FACILITY WILL TERMINATE ON THE

CUSTOMER'S "HEAD END" EQUIPMENT WITH THE POINTS TO BE SERVED BEING THE PRESPECTIVE CUSTOMERS OF THE FRANCHISED CATV COMPANY.

SINCE THE APPLICANT NOW HAS POLE LINES, UNDERGROUND CONDUIT, AND OTHER NECESSARY STRUCTURES USED IN THIS AREA FOR TELEPHONE CABLES AND OTHER DISTRIBUTION FACILITIES, IT IS IN A POSITION TO PROVIDE THE PROPOSED WIDE BAND COAXIAL CABLE FACILITY IN THE MOST ECONOMICAL AND EXPEDITIOUS MANNER. THE COST OF THIS PROPOSED CABLE FACILITY IS COVERED IN DETAIL ON PART (K) OF THE APPLICATION FORM AND IN THE EXHIBIT REFERENCED IN PART (K). THE APPLICANT KNOWS OF NO OTHER ECONOMICAL MEANS OF SATISFYING THE DEMAND FOR THIS TYPE OF SERVICE OTHER THAN THE ONE CONTAINED HEREIN. .

D. E. ANDERSON
OPERATING VICE PRESIDENT
GENERAL TELEPHONE CO OF ILLINOIS





General Exhibit 20

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.

File No. P-C 7213

In re Application of

GENERAL TELEPHONE COMPANY OF ILLINOIS
Bloomington-Normal, Illinois

For Authority to Construct Facilities for Lease
to G. T. & E. Communications, Inc.

To the Commission:

PETITION TO DENY OR DESIGNATE FOR HEARING

Bloomington-Normal Perfect Picture Co. (hereinafter Perfect Picture), by its attorney, respectfully urges the Commission to deny or designate for hearing the application (File No. P-C 7213) filed by General Telephone Company of Illinois (hereinafter GTC) for authority to construct and operate wide distribution facilities for lease to its related affiliate, GT&E Communications, Inc., the CATV franchise holder in Bloomington-Normal, Illinois.¹

1. Perfect Picture, an Illinois corporation, has long been interested in the possibilities of establishing and operating a CATV system to serve Bloomington-Normal, Illinois, and the immediate populous communities and areas. In connection with its plans, Perfect Picture, through its President, Mr. Timothy R. Ives, held numerous conferences with

¹ Notice of the submission of GTC's application was given by the Commission on October 15, 1968 (Report No. W-1, No. 23133) and interested parties were advised that the application might be acted upon in less than the usual thirty-day period of time. The Commission's Notice explained that GTC had requested "Emergency action due to possible loss of the customer's franchise caused by delay in serving its proposed patrons." This request for "Emergency action" was not referred to and was not a part of the application or any of the other papers served upon Perfect Picture.

representatives of GTC from 1965 through August, 1968, concerning possibilities of obtaining the necessary pole attachment agreements. In 1965, Perfect Picture inquired as to whether GTC planned to be an applicant for a CATV franchise in Bloomington-Normal, Illinois, and upon being assured that it did not have such plans, Perfect Picture proceeded to reveal and to discuss its own CATV plans with GTC. GTC indicated that its first preference was to provide distribution facilities to Perfect Picture on a monthly rental basis, but that if this was not desirable, it was also willing to provide space on its poles for the Perfect Picture distribution system. However, its position had changed perceptibly by February, 1966, when GTC inferred strongly that if Perfect Picture decided against leasing GTC facilities, then and in that event, GTC would invite the General Telephone CATV operating company, GT&E Service Corporation (hereinafter GT&E) to come into the market, and would offer that subsidiary a lease arrangement. In December of 1967, GTC indicated a very strong reluctance to entering into any pole attachment agreements. In May of 1968,² it declared its hesitancy to enter into any pole attachment agreements and stated that the general reluctance of the cities to permit the erection of additional poles was a good reason why GTC's CATV operating company, GT&E, should be granted the CATV franchise in Bloomington-Normal, Illinois, GTC also indicated that if Perfect Picture would execute a lease agreement, then and in that event, there was a substantial possibility that GT&E would remove itself from the competition for the Bloomington-Normal CATV franchises. Subsequently, the city councils of Bloomington and Normal jointly awarded a CATV franchise to GT&E and denied the franchise request of Perfect Picture.³

² At this time, GTC was advised that Perfect Picture had analyzed GTC's proposed tariff and believed it to be unreasonably high.

³ Also denied was a request for a franchise submitted by The Tele-Cable Corporation.

2. On or about October 3, 1968, Perfect Picture was served with a copy of the application (Form S4157) by GTC for authority to supplement existing facilities by the construction of spectrum-wide facilities. In the application, GTC contends, *inter alia*, that it is not a carrier subject to the requirements of Section 214 of the Communications Act and that the provisions of that Section are not applicable to its request. It estimates that the cost of the proposed construction would total \$878,419.00 and states that the facilities, when completed, would provide 12 VHF channel service. GTC failed to advise the Commission that the proposed facilities were to be leased to GT&E, its related CATV operating company.⁴

The Contention That GTC is Not Subject
To The Requirements of Section 214 is Untenable

4. As noted in its application, GTC contends that it is not a carrier subject to the requirements of Section 214 of the Communications Act. We point out, however, that over two years ago, the Commission held that the furnishing by telephone companies of channels of communication to CATV operators was clearly a common carrier undertaking. *In the Matter of Common Carrier Tariffs for CATV Systems*, 4 FCC 2d 257, 260 (1966). See also *U. S. v. California*, 297 U.S. 175, 182 (1936) and *U. S. v. Smith*, 215 F. 2d 217 (6th Cir. 1954). The CATV channel service offerings of GTC in the Bloomington-Normal area of Illinois are clearly intended to provide an interstate communications service. The CATV plans of its related company, as represented to the city councils of Bloomington-Normal, contemplate, *inter alia*, the importation and carriage of the signals and programs of out-of-state television

⁴ On October 16, 1968, counsel for Perfect Picture obtained a copy of a telegram dated October 4, 1968, in which GTC requested emergency action referred to above. It is interesting to note that in this telegram, GTC also avoided disclosure of the fact that GT&E was the franchised CATV company which had requested wide spectrum services.

broadcast stations. The interstate communication of such services has been the subject of a very recent ruling of the Supreme Court in *U. S., et al. v. Southwestern Cable Co., et al.*, — U.S. —, 38 S.Ct. 1994 (1968). There, the Court said that it had no doubt but that CATV systems are engaged in interstate communications, even where the signals on the system emanate from broadcast stations located in the same state. 38 S. Ct. at 2000.

5. It is clear in this case that GTC through its related company, GT&E, is engaged or is about to be engaged in interstate commerce. The controlling facts here are that the cable facilities to be furnished by GTC for the benefit of a related subsidiary are links in a continuous transmission of signals from the point of origin to the set of the viewer. A common carrier company, such as GTC, which participates as a link in the relay of television broadcast signals is performing an interstate communications service. The proposed construction is obviously not minor in nature. Some 175 miles of line are proposed to be strung at a cost of nearly \$900,000.00 in order for GTC to provide to its related company facilities for the distribution of CATV signals. The Commission has made clear that the construction of lines for the purpose of providing channel service to a CATV system must be certified pursuant to the provisions of Section 214 of the Act. *In the Matter of General Telephone Company of California*, 14 FCC 2d 170, 174 (1968). Based upon the limited facts disclosed in the application, the position of GTC that it is not subject to the requirements of Section 214 is clearly contrary to Commission and Court precedent and is wholly untenable.

**The Failure of GTC to Disclose its
Relationship to Its Customer-Franchise
Holder Raises Serious Questions**

6. As noted above, GT&E, the franchise holder in Bloomington-Normal, Illinois, is related to GTC, the applicant before the Commission in this case. The Commission has previously indicated its deep interest and concern in situa-

tions where a telephone company proposes to construct CATV distribution facilities for an affiliated CATV operator. *In the Matter of General Telephone Company of California*, 13 FCC 2d 448 (1968), for example, the Commission stated:

"By reason of its control over utility poles, or to the local advantages resulting from its status as an existing common carrier in the community, the telephone company is in a position to preclude or substantially restrain an unaffiliated CATV system from commencing service and thereby eliminate competition. . . . Construction by a telephone company for an affiliated CATV operator calls for careful study on the part of the Commission in order to insure against wasteful duplication or unnecessary construction. Where such an affiliate exists, therefore, it is doubtful that any sufficient equitable basis exists for according permanent relief to the carrier," 13 FCC 2d at 463.

7. Despite this expressed Commission concern, GTC at no time, either in its application or its telegram of October 4, 1968, informed the Commission of the relationship or affiliation that exists between GTC and GT&E. In fact, in the telegram of October 4, 1968, GTC carefully avoided even identifying GT&E but instead referred only to "The franchised CATV company for the Bloomington-Normal area" and to the request for service from its "CATV customer".

8. The Commission has long said that it requires care and complete candor from applicants seeking a license or certificates from the Commission. As stated by the Supreme Court, in cases such as these, the willingness to deceive a regulatory agency may well be more significant than the facts concealed, particularly where immaterial and useless deception are involved. *FCC v. WOKO*, 329 U.S. 223 (1946).

9. GTC in its application avoided disclosing to the Commission the fact that its proposed customer for the wide-

spectrum facilities is a related affiliate, GT&E. This same non-disclosure was carried through in the telegram of October 4, 1968, to the Commission in which GTC asked for special emergency relief indicating the presence of an intentional non-disclosure. This is surely a matter which necessitates further and complete exploration through the hearing processes.

The Conduct of GTC in
Connection with CATV Matters in
Bloomington-Normal Requires Further Examination

10. The Commission's interest in the conduct of applicants is well established. In passing upon the qualification of applicants, the Commission has, over the years, considered various types of unlawful conduct including, for example, violations of Internal Revenue Service laws, conspiracy to violate anti-trust laws, false advertising and other deceptive practices. And the Commission's authority and jurisdiction in this area of inquiry has been sustained by the Courts. See *Mester, et al., v. United States, et al.*, 70 F. Supp. 118, aff'd. *per curiam* 332 U.S. 820 (1947); *Mansfield Journal Co., v. Federal Communications Commission*, 180 F.2d 28 (D.C. Cir. 1950); and *National Broadcasting Company v. United States*, 319 U.S. 190 (1943). The Commission must, of course, be satisfied that an applicant has the requisite qualifications to assure that the public interest and convenience will be served by a grant of his application. However, a finding or final conclusion that an applicant has in fact violated federal anti-trust laws or any law is not a prerequisite to the Commission's consideration of conduct which raises questions under such laws. It is the conduct of the applicant that is important. As was said in *Northern National Gas Co. v. Federal Power Commission*, No. 21,333 (D.C. Cir. June 21, 1968) at page 5 of the slip opinion:

"Although the (Federal Power) Commission is not bound by the dictates of the anti-trust laws, it is clear that anti-trust concepts are intimately involved in a

determination of what action is in the public interest and therefore, the Commission is obliged to weigh anti-trust policy."

11. We believe the conduct by GTC in this case raises questions of fact and law which should be of concern to the Commission and that such conduct ought to be examined, considered and evaluated so far as it relates to matters entrusted to the jurisdiction of the Commission. The Commission's concern with conduct of the nature engaged in by GTC in this case is evident from the explicit language, quoted above, from its decision in the *General Telephone Company of California* case.

12. We express no opinion here as to whether GTC's practices are in violation of anti-trust laws. We do urge, however, that there is a sufficient basis in fact to conclude that lack of candor and willful deceit have tainted GTC which should be carefully scrutinized by the Commission, in order to vindicate the Commission's demands for licensee candor and truthfulness. The past conduct of GTC may well be a reliable indication of its future conduct and the conduct of its related affiliate, GT&E. Judging by its past conduct in this case, it is clear that GTC does not meet the public interest standards for operation of common carrier and CATV systems.

A Hearing Is Necessary for Full Exploration of the Questions Raised in this Case

13. We believe that both the application and the conduct of GTC raises serious questions of both law and fact which necessitate a hearing on the following issues:

1. To determine the extent and nature of the relationship between GTC and GT&E.
2. To determine all facts pertaining to the conduct and the practices of GTC and GT&E in connection with the awarding of a CATV franchise to GT&E in Bloomington-Normal, Illinois, and whether such conduct was

violative of the policies and concepts of the anti-trust or other laws of the United States.

3. To determine the past, present and future plans of GTC and GT&E with respect to the construction, leasing or operation of CATV cable distribution facilities in the United States.

4. To determine the operating policies and practices of GTC and GT&E and, in light of those policies and practices, whether GTC is a common carrier subject to Section 214 or any other provisions of the Communications Act of 1934, or the Commission's Rules and Regulations.

5. To determine the circumstances surrounding the failure of GTC to disclose to the Commission, in its application and in its telegram of October 4, 1968, its relationship or affiliation with GT&E, and whether such failure to disclose was intentional or unintentional.

6. To determine in light of the evidence whether the request of GTC for the construction and operation of wide spectrum distribution facilities for lease to GT&E should be granted in the public interest.

Other Matters

14. There is an additional matter which we wish to mention and that is the announced plans of GTC and GT&E to proceed with the construction and operation of CATV facilities in Bloomington-Normal apparently irrespective of action by the Commission. At hearings before the joint Bloomington-Normal city councils, GT&E stated that it could and, if necessary, would proceed with the construction of CATV facilities irrespective of Commission consideration and action with respect to GTC's compliance with Section 214 of the Communications Act. Thus, if the Commission does not grant the present GTC application, then and in that event, its related CATV operating company, GT&E, plans to proceed to construct its own distribution

facilities (presumably on the theory that GT&E too is exempt from Commission requirements) and to begin operating its CATV system by affording carriage of the programs of only those television stations whose Grade B contours encompass Bloomington-Normal, in whole or in part. On October 3, 1968, GTC, in a news release, stated the following:

"Wide Spectrum Service for transmission use by Community Antenna Television Systems (CATV) will be offered by General Telephone Company of Illinois starting October 6, 1968. Wide Spectrum Service electronically permits services which require broad transmission frequencies (such as forms of television) to be carried via cable. The cable transmission utilizes frequencies similar to those of ordinary VHF television."⁵

15. GTC was surely well aware of the necessity of complying with the Commission's requirements prior to instituting the construction of CATV distribution facilities which would entail an expenditure of nearly \$900,000.00. To the extent that it may have proceeded with such construction, as announced in its news release of October 3, 1968, no equities can lie with GTC and whatever construction, if any, it has already undertaken, prior to Commission permission, has been wholly at its own risk.

16. We also urge that GTC should not be permitted to avoid the mandates and requirements of the Commission through the device of a related company such as GT&E. If such a procedure were to be condoned, any telephone company could successfully avoid the provisions of Section 214 of the Communications Act and other Commission requirements by simply establishing a related or subsidiary CATV operating company and having that company undertake the construction of CATV distribution systems, rather than accomplishing such construction directly by the tele-

⁵ The Bloomington-Normal public was also not informed that this service was for the benefit of a GTC related affiliate, GT&E.

phone company. The public interest militates against the condonation of such a procedure.

WHEREFORE, The Above Considered, the Commission is urged to grant this Petition to Deny or to Designate for Hearing the above-identified application by General Telephone Company of Illinois. The Commission is also respectfully urged to grant such further relief as appears necessary, just and warranted in the circumstances including the issuance of an appropriate injunctive order against GTC's related company, GT&E Communications, Inc.

Respectfully submitted,

/s/ EARL R. STANLEY

Earl R. Stanley

*Counsel for Bloomington-Normal
Perfect Picture Company*

EARL R. STANLEY

DOW, LOHNES AND ALBERTSON

1225 Connecticut Avenue, N.W.

Washington, D. C. 20036

*Counsel for Bloomington-Normal
Perfect Picture Company*

October 22, 1968

AFFIDAVIT

Date: September 25, 1968

Bloomington, Illinois

I, Timothy R. Ives, being first duly sworn, do hereby depose and state that I am President of Bloomington-Normal Perfect Picture Company and that the following facts are true to the best of my personal knowledge and belief, and that in my efforts to secure the CATV franchise for my company, I had many dealings with representatives of General Telephone Company of Illinois from 1965 through August 1968, concerning pole attachment agreements.

(1) I made a contact with Mr. Richard Reed, District Commercial Manager of General Telephone Company of Illinois, at his office on East Market Street approximately the 1st of February 1965. He indicated that I was the first contact he had had about CATV and he felt that a mutually attractive arrangement could be worked out since they had agreements in other communities for pole attachment agreements.

(2) A letter to me dated March 24, 1965, from Mr. Reed, the District Commercial Manager of General Telephone Company of Illinois, says in part, "Our first preference is to provide all distribution facilities on a monthly rental basis. If this is not desirable, we are also willing to provide space on our poles for your distribution system. This procedure would require a pole rental agreement contract."

(3) On February 9, 1966, Mr. Loring C. Merwin, a director of Perfect Picture, wrote Mr. Walter Wright, President of General Telephone of Illinois, that it was "... definitely our intent to continue discussion leading to a contract." to lease a CATV distribution system. This letter was sent after Mr. Merwin and Mr. Wright had met in Mr. Merwin's office on February 9, 1966, and Mr. Wright had told Mr. Merwin, according to a memorandum written by Mr. Merwin in my file dated February 9, 1966, "If we (Perfect Picture) don't want to enter into a lease agreement they (Gen Tel) will probably call in their CATV subsidiary and give them a lease." Also the following is quoted from the memorandum of Mr. Merwin to me dated February 9, 1966: "Walter (Mr. Walter Wright, President of General Telephone Company of Illinois) strongly inferred that if our group decides against signing a Gen Tel contract, he will invite their CATV operating subsidiary to come in and will offer them a contract. Since Gen Tel will make no pole agreements and since neither council is likely to grant another franchise involving the erection of new poles (even though franchisee could make a deal with Illinois Power for 80% of the poles) it appeared to me that if we want to

get into the CATV business we have no other real choice than to go with Gen Tel."

(4) On December , 1967, I had lunch with Mr. William C. Rowland, President of General Telephone Company of Illinois, Dick Ross, a Vice President of General Telephone Company of Illinois, and Bob Griswold, Marketing Director for General Telephone. Griswold had suggested the meeting. When I asked Mr. Rowland about pole attachment agreements he said that he had granted a pole agreement in LaFayette, Indiana, and he hoped it was the last pole agreement he would ever enter into. That the attitude of Gen Tel, as far as he was concerned, as President, was to try to make it attractive on the lease-back arrangement and not enter into pole agreements.

(5) On May 10, 1968, Loring C. Merwin, a director of Perfect Picture, Merrick Hayes, our attorney, and I visited with Mr. Rowland, President of General Telephone Company of Illinois, in his office. We discussed and questioned Mr. Rowland about pole attachment agreements. He indicated that he did not wish to enter into pole agreements and, therefore, he had no rates and there were none now for attachments. Those that were in effect from past agreements would be continued to the end of the agreement, but he hoped that they would not have to be renewed. We pointed out that General Telephone in Bloomington-Normal owned approximately 25% of the poles and that the cities most likely would not like an increase by even 25% the number of poles in the city. Mr. Rowland acknowledged this and pointed out that this was also a good reason that his subsidiary should receive the franchise since they would be operating under a lease and, therefore, there would be no need to place poles. Mr. Rowland indicated that if we would sign the lease agreement with Gen Tel he felt that he could get his subsidiary to pull out and he reviewed what he considered to be the major attraction to a lease agreement.

(6) On the night of August 15, 1968, I attended a joint meeting of the city councils of Bloomington and Normal, which was held to review the bids for the CATV franchise. General Telephone Company of Illinois was represented at this meeting by Mr. James Malone, Central Division Manager. Mr. Malone was asked if General Telephone would enter into pole attachment agreements. His reply was that no one had asked them for such agreements. He was asked if General Telephone had a policy of granting pole attachment agreements to which Mr. Malone replied that they would grant pole attachment agreements to other utilities. When Mr. Malone was pressed on this point as to whether General Telephone would grant pole attachment agreements to a CATV company other than their own, he said he had no answer either "pro or con".

/s/ TIMOTHY R. IVES
(Timothy R. Ives)

Sworn to and subscribed before me this
25th day of September, 1968.

/s/ DOROTHY COLEMAN

My Commission expires: Aug. 3, 1969.

AFFIDAVIT

Date: September 27, 1968
BLOOMINGTON, ILLINOIS

I, Merrick C. Hayes, being first duly sworn, do hereby depose and state that I am an attorney licensed to practice law in the State of Illinois and am practicing in the City of Bloomington, McLean County, Illinois.

That in May of 1968, I accompanied Mr. Loring Merwin and Mr. Timothy Ives, to the office of Mr. William Rowland, President of General Telephone Company of Illinois, in

Bloomington, Illinois. Mr. Ives had previously contacted representatives of the telephone company as President of Bloomington-Normal Perfect Picture Co. in an effort to secure a pole attachment agreement with the telephone company for the purpose of the CATV installation in Bloomington-Normal. Mr. Ives' company was in the process of preparing its proposal or bid to the two cities and as there was a requirement of a pole attachment agreement, the meeting which I attended was to secure same. Mr. Rowland in response to our inquiry indicated that they felt that they had to be a part of any CATV installation and that unless we would agree to lease the entire system from the telephone company according to a tariff which they had previously filed they would encourage one of their affiliate companies to apply for a system to secure their participation. Mr. Rowland indicated that for numerous reasons they were not interested in making any pole attachment agreements and that we should consider whether we would agree to lease the entire facility from them or be confronted with the application by their affiliate without the benefit of any pole attachment agreements with the second alternative. We left the meeting with no other alternatives offered to us and the pole attachment agreements out of our reach.

The above information is true to the best of my personal knowledge and belief.

/s/ MERRICK C. HAYES
Merrick C. Hayes

Subscribed and sworn to before me this
27th day of September, 1968.

/s/ MARY DAUGAN
Notary Public

AFFIDAVIT

September 26, 1968
Bloomington, Illinois

I, Loring C. Merwin, being first duly sworn, do hereby depose and state that I am a director of Bloomington-Normal Perfect Picture Company and that the following facts are true to the best of my personal knowledge and belief:

On Friday afternoon, May 10, 1968, I attended a meeting at the office of Mr. William C. Rowland, President of General Telephone Company of Illinois. Also present were Timothy R. Ives, President of Perfect Picture and Merrick Hayes, attorney for that corporation.

Our principal purpose in arranging this meeting with Mr. Rowland was to discuss with him the possibility of a pole attachment agreement in the event that Perfect Picture Corporation was the successful applicant for the CATV franchise at Bloomington-Normal, Illinois. Mr. Ives had previously discussed this matter with other members of the GenTel organization but had been unable to get a firm reply. Each time the subject was broached the GenTel people had said that although they did have pole attachment agreements elsewhere in Illinois it was "becoming company policy" not to make such agreements. On each occasion they urged us to make our bid on the basis of a cable system to be constructed by GenTel and leased by them to us.

In the meeting with Mr. Rowland we said that we would like a definite answer as to whether or not GenTel would make a pole attachment agreement. We said that we had analyzed their proposed tariff for a system to be rented to us and we felt that it was unreasonably high. We said that we had decided to construct our own system and felt that a pole attachment agreement would be essential inasmuch as GenTel presently owns about 40% of the utility

poles in Bloomington-Normal and has an agreement with Illinois Power Company whereby the two companies will eventually each own 50% of the poles. We pointed out that we had been assured by Illinois Power Company that they would give us an attachment agreement on the poles owned by them.

We further pointed out that if we were forced to put in our own poles at locations where the present poles are owned by GenTel there would be a very strong adverse public reaction. One of the primary reasons for CATV, aside from better television service, is to enhance the appearance of the city by removing unsightly rooftop antennas and we pointed out that this esthetic gain would be more than negated by the unsightliness of additional poles throughout the two communities. We felt that unless we could use all of the existing utility poles it would make it next to impossible for us to be the successful bidder for the CATV franchise. Also, the ordinance of both Bloomington and Normal required that the successful applicant have pole attachment agreements within 30 days after award of the franchise.

Mr. Rowland said that he sympathized with our point of view but that it was indeed becoming the definite policy of GenTel of Illinois not to make pole attachment agreements. He spoke of the present dual use with Illinois Power, the necessity of proper spacing between installations on the poles, the potential interference or damage from third party use, etc. He ended that part of the conversation by saying (I believe this is an exact quotation) "I hope I never have to sign another pole attachment agreement."

Mr. Rowland then urged us to reconsider allowing GenTel to construct a rental system for us. He strongly indicated that if we would be willing to base our bid to the two cities on such a rental system, he believed he could persuade their affiliate, General Telephone and Electronics

Communications, Inc., to drop out as an applicant for the franchise.

/s/ LORING C. MERWIN
Loring C. Merwin

Sworn to and subscribed before me this
day of , 1968.

(Illegible Signature)
Notary

My Commission expires: (Illegible Date)

General Exhibit 21

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

File No. P-C-7213

In re:
Application of
GENERAL TELEPHONE COMPANY OF ILLINOIS

For Authority to Construct and Operate Wide-Spectrum
Distribution Facilities for Lease in Bloomington
and Normal, Illinois

To: The Commission

PETITION TO DENY APPLICATION FOR
SECTION 214 CERTIFICATION

TeleCable Corporation hereby petitions the Commission to deny the above-captioned application of General Telephone Company of Illinois for a certificate pursuant to Section 214 of the Communications Act for authority to construct CATV facilities in Bloomington and Normal, Illinois to be leased to G T & E Communications, Inc., a company affiliated with the applicant.

Interest of Petitioner

1. TeleCable Corporation, (hereinafter TeleCable) a Virginia corporation, is engaged in the operation of CATV systems in various communities in the United States. On May 28, 1968, TeleCable submitted its bid for CATV franchises to the governing bodies of Bloomington and Normal, Illinois.¹ (See Exhibit A). Competing applications were submitted by Bloomington-Normal Perfect Picture Company (hereinafter Perfect Picture) and G T & E Communications, Inc. (hereinafter G T & E) a company owned by General Telephone & Electronics Corporation and affiliated with General Telephone Company of Illinois (hereinafter General Telephone of Illinois). The latter operates the telephone company serving Bloomington and Normal.

2. As will be described in detail hereinafter, General Telephone of Illinois and G T & E conspired to take advantage of the monopoly over utility poles and easements enjoyed by General Telephone of Illinois in such a way as to eliminate competition for CATV in Bloomington and Normal. As a consequence of that conspiracy and the refusal of General Telephone of Illinois to represent affirmatively that it would lease pole space to a non-utility, such as TeleCable or Perfect Picture, G T & E was awarded the CATV franchises in Bloomington and Normal. If General Telephone of Illinois is authorized to build CATV facilities for lease to G T & E as requested in its application, herein, TeleCable Corporation will be denied permanently an opportunity to compete or to enter the CATV business in Bloomington and Normal. TeleCable, therefore, is a party in interest, and has standing to contest the issuance of a certificate of public convenience and necessity to the applicant.

¹ Because of their proximity to each other, the cities of Bloomington and Normal determined to consider the question of CATV in joint sessions, and to grant franchises to the same applicant.

*The Public Convenience and Necessity Do Not Require
the Construction or Operation Requested by
General Telephone of Illinois*

3. The facts of this case persuasively demonstrate the Commission's wisdom in placing severe limitations on proposals of telephone companies to offer "lease-back" CATV circuits to affiliated companies. Before reciting those facts, it is appropriate briefly to review the Commission's holdings in *General Telephone Company of California*, FCC 68-658, released June 26, 1968. First, of course, the Commission held "that the construction of lines for the purpose of providing channel service either to a broadcast station or to a CATV system must be certificated pursuant to the provisions of Section 214." (Par. 27) The Commission, however, saw grave dangers in the certification of telephone constructed CATV systems in situations such as this where there exists "an affiliation between the CATV operator and the telephone company servicing the particular community, such as a parent-subsidiary relationship or where both are under common control." (Par. 32) In explanation of its concern the Commission stated:

"By reason of its control over utility poles, or other local advantages resulting from its status as an existing common carrier in the community, the telephone company is in a position to preclude or to substantially delay an unaffiliated CATV system from commencing service and thereby eliminate competition." (Par. 32)

4. There follows a case history that documents just how effectively a telephone company can, indeed, "eliminate competition." The pertinent information is detailed in the attached affidavits of the principals of Perfect Picture and TeleCable, and we will do nothing more than digest their statements to place events in chronological order.

*The History of the CATV Franchise Grants in
Bloomington and Normal, Illinois*

5. From the affidavit of Timothy R. Ives, it is apparent that the interest of his company in securing a CATV franchise and a pole attachment agreement was first conveyed to General Telephone of Illinois sometime in 1965. Mr. Ives then relates the import of a 1966 meeting with representatives of General Telephone of Illinois at which Perfect Picture was informed that if it did not agree to lease CATV circuits from the telephone company pursuant to a tariff, General Telephone of Illinois would invite its affiliate, G T & E to seek the CATV franchise and would "give them a lease."

6. In 1967, Mr. Ives notes, General Telephone of Illinois again let it be known in unequivocal terms that it would make every possible effort to avoid granting further pole attachment agreements to unaffiliated CATV systems. The strategy unraveled in the conversation on May 10, 1968 between Mr. Merwin of Perfect Picture and Mr. Rowland, the President of General Telephone of Illinois during which Perfect Picture once more sought to broach the question of a pole attachment agreement. The response of General Telephone of Illinois was devastatingly effective. Since the company did not wish to execute agreements for pole attachments no terms for such agreements would be offered. General Telephone of Illinois thus proved the axiom that it takes two parties to make a contract. Mr. Rowland, however, renewed the telephone company's offer to get its subsidiary, G T & E to "pull out" if Perfect Picture would sign an agreement to lease a system from General Telephone of Illinois.

7. This bald threat of General Telephone of Illinois is corroborated by the attached affidavit of Merrick C. Hayes, an attorney licensed to practice law in the State of Illinois. Mr. Hayes relates the substance of the meeting between

the principals of General Telephone of Illinois and Perfect Picture as follows:

"Mr. Ives' company [Perfect Picture] was in the process of preparing its proposal or bid to the two cities [Bloomington and Normal] and as there was a requirement of a pole attachment agreement, the meeting which I attended was to secure same. Mr. Rowland in response to our inquiry indicated that they [General Telephone of Illinois] felt that they had to be a part of any CATV installation and that unless we would agree to lease the entire system from the telephone company according to a tariff which they had previously filed they would encourage one of their affiliate companies to apply for a system to secure their participation. Mr. Rowland indicated that for numerous reasons they were not interested in making any pole attachment agreements and that we should consider whether we would agree to lease the entire facility from them or be confronted with the application by their affiliate without the benefit of any pole attachment agreements with the second alternative. We left the meeting with no other alternatives offered to us and the pole attachment agreements out of our reach."

8. In addition to confirming the aforementioned statements of Ives and Hayes, Loring C. Merwin, another principal of Perfect Picture explains in his affidavit (attached hereto) that the lease-back arrangement with General Telephone was rejected by his company because "we had analyzed their [General Telephone of Illinois] proposed tariff for a system to be rented to us and we felt that it was unreasonably high."

9. As a consequence of the position of General Telephone of Illinois regarding pole attachment agreements, both Perfect Picture and TeleCable had to condition their bids on their "ability to negotiate pole attachment agreements

with local telephone and electric utilities at reasonable rental rates." (See Exhibit A) The significance of this condition is explained in paragraph 3 of the attached affidavit of Jimmie S. Key, an employee of TeleCable, wherein he states that "a major issue [in the franchise hearing] was to determine which applicant could provide service first . . ." In an effort to show that GT & E, which had proposed to lease a system from its affiliate, General Telephone of Illinois, (See Exhibit B) also would face delays in commencing operation of CATV in Bloomington and Normal, TeleCable advised the city councils of the Commission's ruling regarding the applicability of Section 214 to telephone "lease-back" systems. GT & E at first denied that the Commission's decision would apply to its proposal (See Exhibit C), but at the franchise hearing, GT & E took the position that if certification caused any delays, it would construct the CATV system rather than lease it from General Telephone of Illinois (See Affidavit of Rex A. Bradley, attached).

10. The significance of the General Telephone of Illinois-GT & E strategy cannot be fully appreciated without considering that one of the primary objectives of the joint franchise hearing was to determine which applicant would first commence a CATV service in Bloomington and Normal. Naturally the applicants that were not affiliated with the telephone company were forced to condition their proposals on the successful negotiation of a pole attachment agreement. General Telephone of Illinois, however, refused to negotiate with them, and refused to indicate to the city councils any willingness to negotiate such an agreement should either non-affiliated company win the franchise award. General Telephone of Illinois further sought to eliminate non-affiliated applicants by offering terms for a lease-back system which were unreasonably high.² GT & E

² Since only a company commonly owned with General Telephone of Illinois could afford to lease a system under the tariff, the conspiracy between GT & E and General Telephone of Illinois also constitutes a violation of Section 202(a) of the Communications Act.

represented, however, that if it was awarded a franchise, it could lease a system from General Telephone of Illinois or, it could lease pole space and construct a system without a "214 certification." Surely, the Commission seldom has been presented with so clear a case of oppressive practices designed to eliminate competition in the CATV field. By virtue of its monopoly over utility poles and easements, and the offering of unreasonable tariff terms for a "lease-back" system, General Telephone of Illinois, in concert with its affiliate, G T & E, has conspired to extend its existing monopoly over telephone services in Bloomington and Normal, Illinois, to CATV services as well.

11. On the basis of the matters recited, herein, the Commission certainly cannot find that the public convenience requires the certification of the construction of interstate lines sought by General Telephone of Illinois. We submit, however, that the public interest requires more than a mere denial of the application, herein. The Commission also must declare that its express policy of subjecting telephone constructed CATV systems to certification requirements would be violated if an affiliated company were to seek to avoid certification by constructing a system under pole attachment arrangements instead of a tariff. Because of the affiliation between General Telephone of Illinois and G T & E, the Commission simply could not assure the separation of the common carrier services of the telephone company from the non-common carrier services of its CATV affiliate. Indeed, if the Commission tolerates the circumvention of its decision in Docket 17333 through the scheme revealed by G T & E at the Bloomington-Normal franchise hearing there will be little, if any, significance to the certification requirement.

WHEREFORE, TeleCable Corporation urges the Commission to:

(1) Deny the Application of General Telephone of Illinois for authority to construct and operate wide-spectrum dis-

tribution facilities for lease in Bloomington and Normal, Illinois.

(2) Declare that construction of such facilities by a company affiliated with General Telephone of Illinois would require certification and, therefore, would violate the provisions of an order denying such authority to General Telephone of Illinois. Find, alternatively that in the context of this case, the construction of CATV facilities by G T & E under a pole attachment agreement with General Telephone of Illinois would violate the intent of the Commission's decision in Docket 17333.

(3) Order General Telephone of Illinois to cease and desist from further conduct tending to eliminate competition as heretofore described.

Respectfully submitted,

TELECABLE CORPORATION

By /s/ JAY E. RICKS

Jay E. Ricks

Hogan & Hartson

815 Connecticut Ave., N. W.

Washington, D. C. 20006

October 21, 1968

EXHIBIT A

May 28, 1968

The Honorable Mayor and City Council
City of Bloomington, Illinois

The Honorable President and Trustees
Town of Normal, Illinois

Gentlemen:

We submit herewith our bid for the CATV Franchise for the City of Bloomington and the Town of Normal. We propose a system which initially would have the capability of twelve TV channels plus the FM radio band and would

have the capability for expansion to twenty TV channels when required. Submitted with this bid are four Certified checks as follows:

1. City of Bloomington — \$20,000.00
2. City of Bloomington — 250.00
3. Town of Normal — 20,000.00
4. Town of Normal — 250.00

TeleCable submits the additional information required in Part 7 of the Proposal and Application Form as Attachments 1-4. Notes 1-4 explain further some of the information required by the proposal form.

Please note that in addition to the information required on the proposal sheet, we have attached Schedule A which will provide you details of TeleCable's bid as to Subscriber Rates. We provide the details so that the full merits of our bid may be considered during evaluation.

Attachment 5, a booklet containing letters of recommendation of TeleCable Corporation from City Officials, TV Dealers, TV Stations, and other businessmen in some of the cities where TeleCable now operates CATV Systems, is not a required item but is furnished to establish TeleCable as an ethical, capable, and reputable firm.

TeleCable fully conditions its bid, as in essence all applicants must, on its ability to negotiate pole attachment agreements with the local telephone and electric utilities at reasonable rental rates.

Very truly yours,

TELECABLE CORPORATION

REX A. BRADLEY

Vice President & General Manager

RAB:pe

EXHIBIT B

F. The following statement sets forth all agreements, written or oral, existing between the Applicant and any other person, firm, group or corporation with respect to the proposed franchise and its proposed operation: (Attach additional sheets if required.)

None, except that General Telephone & Electronics Corporation has agreed to advance the funds necessary for the construction and operation of the proposed system, and General Telephone Company of Illinois will furnish distribution facilities pursuant to tariff number 1 Section 34 filed by it with the Illinois Commerce Commission. See attached letters of commitment marked Exhibits C & D.

G. The proposed address of the office operating any franchise resulting from this application is:

Address No local office established at this date

City State

See: G T & E Communications Inc.
Eastern Region Office
1504 Directors Row, Fort Wayne,
Indiana 46808

H. The proposed address of the service department of said applicant is:

Address None established at this date

City State

3. The Applicant proposes to provide service initially to the following parts of the City of Bloomington and the Town of Normal. (Describe or attach map showing initial service areas.)

See attached Exhibit E.

EXHIBIT C

MEMORANDUM

To: Mayor and Town Council, Town of Normal
Mayor and City Council, City of Bloomington

From: Town Administrator and Town Attorney,
Town of Normal

City Manager and Corporation Counsel,
City of Bloomington

SUBJECT: CATV

DATE: August 2, 1968

BACKGROUND—Last year the Bloomington City Council and the Town of Normal Board of Trustees agreed to cooperate on the possible awarding of a joint CATV franchise to a single firm. As a result of this, the Councils jointly hired the engineering firm of J. C. Barnard & Associates to work with the Corporation Counsel and City Manager of the City of Bloomington and the Attorney and Administrator of the Town of Normal in preparing a franchise ordinance proposal and bidding procedures for a CATV franchise. The Consultant assisted the attorneys in preparing such an ordinance which was deemed to be in the best interest of the citizens of the Town of Normal and the City of Bloomington and the ordinance was adopted by both Councils. Included in the ordinance were bonding and performance requirements that applicants would be required to meet. Following adoption of the ordinance by both Councils a joint CATV franchise bid was opened May 29, 1968 at the Bloomington City Hall for Bloomington and Normal. The communities then had until August 29, 1968 in which to evaluate the applicant's qualifications and their bids. Copies of the bids were distributed to the members of the respective city Councils, to the press and to each of the bidders. An additional copy went to J. C. Barnard & Associates who was asked to review the bids

and to make its recommendation to the Manager, Administrator and Attorneys. A copy of the consultant's recommendation is included with this report.

REVIEW AND RECOMMENDATIONS—The City Manager, Town Administrator and Attorneys of the municipalities met recently with representatives from G T & E Communications Inc., Bloomington-Normal Perfect Picture Company and had a telephone conversation with a third applicant, TeleCable Corporation. These meetings were held separately with each of the applicants. The opportunity was afforded to each applicant to explain any portion of his bid and to ask questions of the municipal representatives. The city officials also had an opportunity to review portions of the bid proposals with the applicant concerned and to ask questions of the applicants.

The Consultant's report correctly states information about each of the bid proposals. The Bloomington-Normal Perfect Picture Company did not meet the requirements outlined in the ordinance in that it did not agree to proceed with the installation of a CATV system nor did it offer to put up the required performance bond until assurance is received from the Federal Communications Commission that distant stations can be received. This is a complete departure from the approach outlined in our ordinance, and to consider it would require an ordinance change. In preparing the ordinance this was specifically covered to require providing the performance bond and also requiring immediate steps to be taken to begin the installation of a CATV system in Bloomington and Normal with certain deadlines established. If the Councils of Bloomington and Normal wish to approve the requested ordinance changes the Manager, Administrator, and two municipal attorneys concur in the Consultant's recommendation that all bids be rejected. All those interested in bidding in the manner proposed by the Bloomington-Normal Perfect Picture Company would then have the same opportunity to bid. This might open the field to additional bidders but also

it might result in the loss of the present applicants as they would not be required to resubmit. Unless a different approach is adopted Bloomington-Normal Perfect Pictures must be eliminated from consideration.

As to the two remaining bids, it appears that the proposed rate schedule of G T & E gives a slight overall advantage. There is a 5¢ differential in the single connection monthly base rate in favor of TeleCable. However, G T & E offers considerably lower monthly rates for each additional connection to the same premises, and offers 10% reduction on advance payment basis. The G T & E offer has no reservation on a pole attachment agreement, whereas there is a slight question on TeleCable. G T & E has submitted a complete initial layout for both towns, whereas TeleCable has not yet performed the same.

A decision by the Federal Communications Commission concerning Section 214 of the Communications Act regarding additional procedures on the part of telephone companies entering the CATV business had been rendered subsequent to our taking bids on May 29, 1968. In order to clear this matter we questioned representatives of G T & E Communications Inc. as to whether the recent "214" decision by the FCC did in any way affect the validity of their bid or ability to perform within the time limitations of our ordinance. They stated that this decision did not affect their bid or performance. Therefore, if G T & E Communications Inc. accepts the franchise we would expect to hold them strictly to the performance deadlines.

In summary G T & E Communications Inc. has the most favorable bid and its acceptance would result in CATV service being available to the public at the earliest possible time.

In view of the Consultant's report and with a deadline of August 29 for awarding of a CATV franchise under the

ordinance and bidding proposal, our recommendations are as follows:

- A. That the Town of Normal Board of Trustees at its meeting on August 5, 1968 authorize granting of a CATV franchise to the G T & E Communications Inc. and the Attorney be instructed to prepare the CATV franchise ordinance, subject to the Bloomington City Council taking similar action.
- B. That the Bloomington City Council at its meeting of August 12, 1968 authorize granting of a CATV franchise to G T & E Communications Inc., and adopt the CATV franchise ordinance as prepared by the Bloomington corporation counsel.
- C. That the Town of Normal Board of Trustees at its meeting of August 19, 1968 adopt the CATV franchise ordinance as prepared by the Normal Town Attorney.

Respectfully submitted,

For the Town of Normal:

/s/ GORDON B. JAEGER
Gordon B. Jaeger,
Administrator

ROBERT FLEMING,
Town Attorney

For the City of Bloomington:

/s/ S. W. McALLISTER
S. W. McAllister,
City Manager

JAMES R. DEPEW,
Corporation Counsel

REPORT ON
CATV FRANCHISE APPLICATIONS
PREPARED FOR THE
CITY OF BLOOMINGTON, ILLINOIS
AND THE
TOWN OF NORMAL, ILLINOIS

The attached "Franchise Proposal Check List" provides a quick comparison between the proposals and the provisions of Ordinance Number 1968-27 of the City of Bloomington and Ordinance Number 715 of the Town of Normal.

As can be seen from this check list, the proposal of the Bloomington-Normal Perfect Picture Company fails to meet the requirements of the subject ordinances in several substantial matters.

Cover letter received from Bloomington-Normal Perfect Picture Company with application for CATV franchise asked that the letter be included as part of the application.

Certain portions of this cover letter seek to obtain franchise and operate system in a manner contravening, in substantial manner, the provisions of the ordinances under which the application was filed.

The first sentence on Page 3 of subject letter is a statement—the net effect of which is to completely rescind Section 7 of the existing Ordinance. Granting of a franchise with this statement included as one of the conditions permits the applicant to accept the franchise without any obligation to attempt to meet the time of performance established by the subject ordinances. Granting of the requested changes would in fact permit this applicant to accept the franchise award and not actually construct any system during the 15 year life of the grant. Inclusion of the delays requested would result in delay in construction by at least many months with resultant lack of service to the residents and loss of revenue to the municipalities.

The apparent intent of this applicant is clarified by the first sentence of the second paragraph on Page 3 of said letter. There, this applicant has indicated that, despite the provision of Section 7(a) of the Ordinance, a request for waiver to the Federal Communications Commission will be filed within 90 days in lieu of the 30 days established by the ordinance.

The last line on the first page of the letter from the Economy Finance Corporation indicates that adequate financing commitment for this applicant has not been made within the requirements of the subject ordinances.

Maps included in the "TV Factbook" and the "CATV & Station Coverage Atlas" published by Television Digest, Incorporated, Washington, D. C. both indicate that the Grade B contour of WCHU Channel 33, Champaign covers a portion of the City of Bloomington. This applicant does not propose to include this channel despite the requirements of Section 8(i) of the subject ordinances.

Any claims to lack of financial viability for a system without distant stations would tend to be refuted by the agreement on the part of the other two applicants to concur with the time requirements of the subject ordinances.

The only way that any further consideration could be given to this application would be to reject all proposals, amend the enabling ordinance as requested by Bloomington-Normal Perfect Picture Company and request new proposals on the basis of the amended ordinance. Under these circumstances, we recommend that the proposal of the Bloomington-Normal Perfect Picture Company be rejected as not responsive to the request for proposals.

The application from the TeleCable Corporation fails to meet the requirements of the subject ordinances in one substantial matter. The cover letter attached to the TeleCable application places a condition on its bid making same subject to negotiation of pole attachment agreements

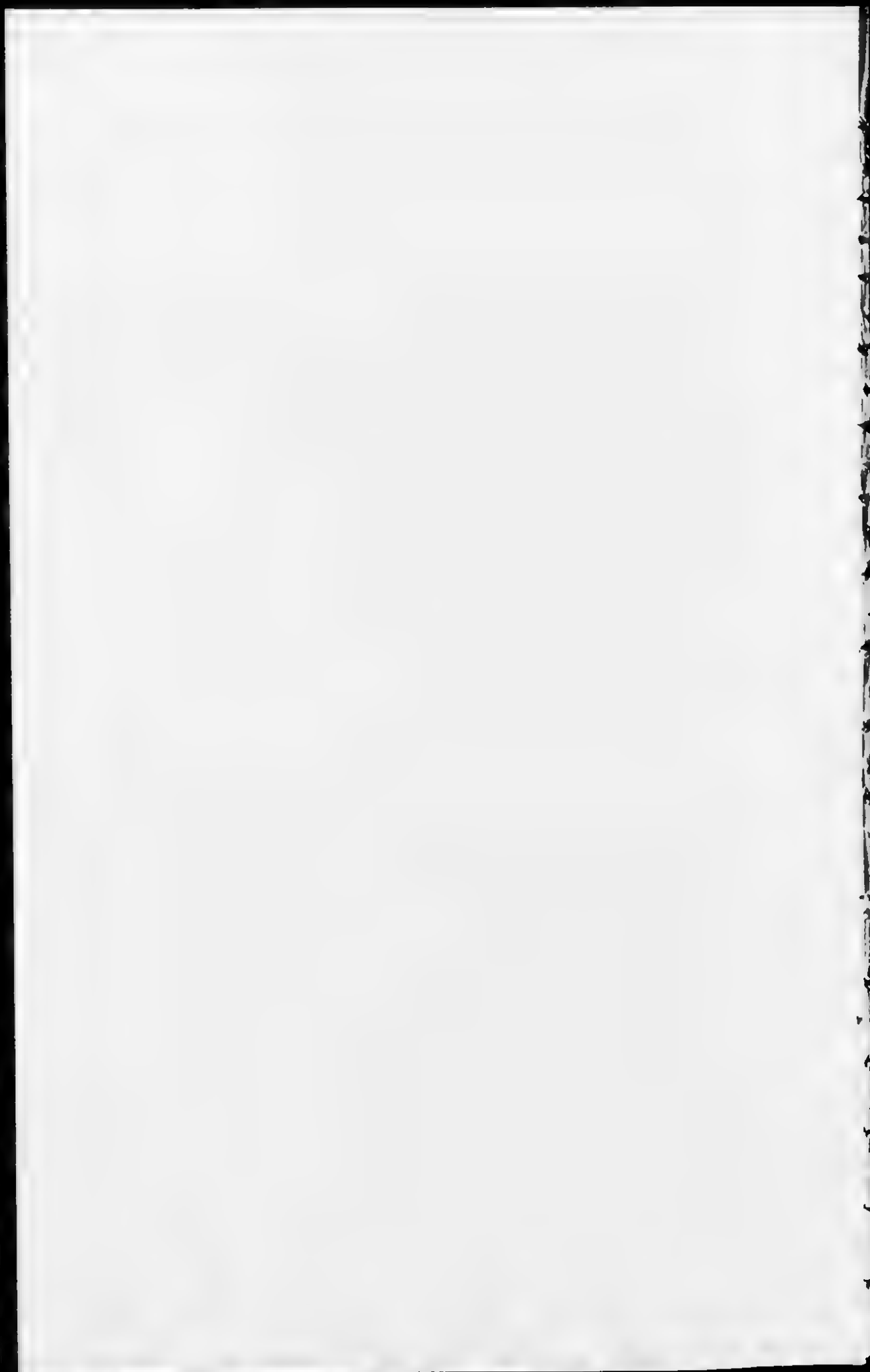
with the local telephone and electric utilities at reasonable rental rates. Section 4(i) of the subject ordinances clearly places the responsibility for this matter on the Franchisee and it does not seem advisable for the municipalities to become a party in this matter. If the franchise is awarded to the TeleCable Corporation and excessive delays are experienced in securing pole permits caused by circumstances beyond the control of the Franchisee, Section 7(d) of subject ordinances provides for extension of certain time limits at the discretion of the respective Councils.

This appears to be adequate relief for the pole attachment situation. Therefore, said application should be rejected.

The proposal received from GT&E Communications appears to meet all requirements of Ordinance Number 1968-27 of the City of Bloomington and Ordinance Number 915 of the Town of Normal. Therefore, we recommend award of the franchise to GT&E Communications.

This award will enable the residents of Bloomington and Normal to purchase CATV service at the earliest practicable date if they so desire, will generate a minimum of approximately \$7000 per year in franchise and personal property taxes and will provide the inhabitants with distant signal service as soon as the FCC provides authorization for same.

A further minor advantage of the GT&E Communications proposal is that the subscribers to the service may pay the lowest of the three proposed rates if they choose to exercise the annual payment discount option.



FRANCHISE PROPOSAL CHECK LIST

	BLOOMINGTON- NORMAL PERFECT PICTURE CO.	CT&E COMMUNICATIONS INC.	TELECABLE
<u>TIME OF PERFORMANCE</u>			
SECURE PERMITS	NO	///	NO
COMMENCE CONSTRUCTION	NO	///	///
COMMENCE OPERATION	NO	///	///
COMPLETE INITIAL AREA	NO	///	///
<u>CONSTRUCTION AND OPERATIONAL STANDARDS</u>			
HANDBOOK B1	///	///	///
24 HOUR PER DAY	///	///	///
BASEBAND CHARACTERISTICS	///	///	///
ECHO EFFECTS	///	///	///
SIGNAL LEVEL	///	///	///
SPURIOUS RADIATION	///	///	///
NO COLOR DEGRADATION	///	///	///
LOCAL STATIONS	NO-MINOR*	///	MINOR*
INTERFERENCE	///	///	///
<u>FEES TO TOWN</u>			
SERVICE WITHOUT CHARGE	///	///	///
EMERGENCY ALERT	///	///	///
FRANCHISE TAX	///	///	///
<u>BOND</u>			
BID BOND	NO	///	///
PERFORMANCE BOND	///	///	///
<u>LOCATION FORM</u>			
COMPLETE	///	///	///
BOND OR CHECK	///	///	///
FILING FEE	NO	///	///
FINANCING ASSURANCE	///	///	///
<u>FEES</u>			
<u>SERVICE CONNECTION</u>	FIRST \$10.00 ADDITIONAL TV 5.00 D ADDITIONAL FM 2.50 D APARTMENT NEGOTIATED BUT HOTEL-MOTEL LESS THAN ABOVE FIRST 4.70 ADDITIONAL TV 1.50 ADDITIONAL FM 1.50 E APARTMENT HOUSE FIRST NEGOTIATED BUT ADDITIONAL LESS THAN ABOVE HOTEL-MOTEL FIRST 5.00 EACH NEXT 29 1.00 EACH NEXT 20 1.00 EACH ADDITIONAL 1.00 NOT SPEC.	\$10.00 A 5.00 5.00 NONE T&N 3.00 F 1.00 F 1.00 F 5.00 F 2.50 F 5.00 F 1.00 F 1.00 F 1.00 F 3.00 MIN.	\$9.95 B-C 5.00 5.00 5.00 T&N 4.95 1.25 1.25 4.95 2.50 4.95 1.50 1.25 1.00 5.00
<u>MONTHLY</u>			

RELOCATION

- A WAIVED BEFORE THE OFFICIAL IN-SERVICE DATE
 B SPECIAL COLLEGE STUDENT RATE \$5.00
 C NO SCC FOR LIMITED PERIOD AROUND "TURN-ON" TIME.
 D NO CHARGE AT TIME OF FIRST CONNECTION
 E \$0.75 FOR ADDITIONAL FM OVER 1ST FM
 F SUBJECT TO A 10% DISCOUNT FOR ANNUAL PAYMENT

THESE PROPOSALS DID NOT SPECIFICALLY MENTION THE INTENTION OF INCLUDING
 CHU CHANNEL 43 BLOOMINGTON ON A "WHEN ON THE AIR" BASIS. THIS ITEM IS OF
 AN INDEFINITE NATURE AND THEREFORE SHOULD NOT BE GIVEN ANY SERIOUS CONSIDER-
 ATION AT THIS TIME.

BEST COPY AVAILABLE

from the original bound volume

<u>CHANNELS</u>		<u>LOCATION</u>	<u>NETWORK</u>	<u>BLOOMINGTON- NORMAL PERFECT PICTURE CO.</u>	<u>GT&E COMMUNICATION INC.</u>	<u>TELEGRAPH</u>
WGIA	3	CHAMPAIGN	CBS	✓	✓	✓
WGN-TV	9	CHICAGO	IND.	✓	MW	-MW
KPLR-TV	11	ST. LOUIS	IND.	MW	N.P.	N.P.
WTTW	11	CHICAGO	EDUC.	✓	N.P.	N.P.
WILL-TV	12	URBANA	EDUC.	✓	✓	✓
WAND	17	DECATUR	ABC	✓	✓	✓
WIRL-TV	19	PEORIA	ABC	✓	✓	✓
WICS	20	SPRINGFIELD	NBC	✓	✓	✓
WEEK	25	PEORIA	NBC	✓	✓	✓
WNSD-TV	31	PEORIA	CBS	✓	✓	✓
WFLO	32	CHICAGO	IND.	✓	MW	-MW
WCHU	33	CHAMPAIGN	NBC	NO	✓	✓
WGNS	43	BLOOMINGTON	BPCT	MINOR*	✓	MINOR*
EMERGENCY		LOCAL		✓	✓	✓
TIME-WEATHER		LOCAL		✓	✓	✓
NEWS		LOCAL		✓	✓	✓
FM		AS AVAILABLE		✓	✓	✓

* THESE PROPOSALS DID NOT SPECIFICALLY MENTION THE INTENTION OF INCLUDING WGNS CHANNEL 43 BLOOMINGTON ON A "WHEN ON THE AIR" BASIS. THIS ITEM IS OF AN INDEFINITE NATURE AND THEREFORE SHOULD NOT BE GIVEN ANY SERIOUS CONSIDERATION AT THIS TIME.

** NO INDICATION THAT MICROWAVE RELAY WOULD BE REQUIRED FOR THESE CHANNELS. THE DISTANCES INVOLVED STRONGLY SUGGEST THAT THIS REQUIREMENT DOES IN FACT EXIST.

*** INCLUSION NOT SIGNIFICANT SINCE PROGRAMS ARE PROVIDED BY WCHU CHANNEL 33 WHICH OPERATES AS A SATELLITE OF WICS.

N.P. NOT PROVIDED WHICH IS A FRANCHISEE PREROGATIVE.

BEST COPY AVAILABLE

from the original bound volume

AFFIDAVIT

Date: September 25, 1968
Bloomington, Illinois

I, Timothy R. Ives, being first duly sworn, do hereby depose and state that I am President of Bloomington-Normal Perfect Picture Company and that the following facts are true to the best of my personal knowledge and belief, and that in my efforts to secure the CATV franchise for my company, I had many dealings with representatives of General Telephone Company of Illinois from 1965 through August 1968, concerning pole attachment agreements.

(1) I made a contact with Mr. Richard Reed, District Commercial Manager of General Telephone Company of Illinois, at his office on East Market Street approximately the 1st of February 1965. He indicated that I was the first contact he had had about CATV and he felt that a mutually attractive arrangement could be worked out since they had agreements in other communities for pole attachment agreements.

(2) A letter to me dated March 24, 1965, from Mr. Reed, the District Commercial Manager of General Telephone Company of Illinois, says in part, "Our first preference is to provide all distribution facilities on a monthly rental basis. If this is not desirable, we are also willing to provide space on our poles for your distribution system. This procedure would require a pole rental agreement contract."

(3) On February 9, 1966, Mr. Loring C. Merwin, a director of Perfect Picture, wrote Mr. Walter Wright, President of General Telephone of Illinois, that it was "... definitely our intent to continue discussion leading to a contract." to lease a CATV distribution system. This letter was sent after Mr. Merwin and Mr. Wright had met in Mr. Merwin's office on February 9, 1966, and Mr. Wright had told Mr. Merwin, according to a memorandum written by

Mr. Merwin in my file dated February 9, 1966, "If we (Perfect Picture) don't want to enter into a lease agreement they (Gen Tel) will probably call in their CATV subsidiary and give them a lease." Also the following is quoted from the memorandum of Mr. Merwin to me dated February 9, 1966: "Walter (Mr. Walter Wright, President of General Telephone Company of Illinois) strongly inferred that if our group decides against signing a Gen Tel contract, he will invite their CATV operating subsidiary to come in and will offer them a contract. Since Gen Tel will make no pole agreements and since neither council is likely to grant another franchise involving the erection of new poles (even though franchisee could make a deal with Illinois Power for 80% of the poles) it appeared to me that if we want to get into the CATV business we have no other real choice than to go with Gen Tel."

(4) On December 5, 1967, I had lunch with Mr. William C. Rowland, President of General Telephone Company of Illinois, Dick Ross, a Vice President of General Telephone Company of Illinois, and Bob Griswold, Marketing Director for General Telephone. Griswold had suggested the meeting. When I asked Mr. Rowland about pole attachment agreements he said that he had granted a pole agreement in LaFayette, Indiana, and he hoped it was the last pole agreement he would ever enter into. That the attitude of Gen Tel, as far as he was concerned, as President, was to try to make it attractive on the lease-back arrangement and not enter into pole agreements.

(5) On May 10, 1968, Loring C. Merwin, a director of Perfect Picture, Merrick Hayes, our attorney, and I visited with Mr. Rowland, President of General Telephone Company of Illinois, in his office. We discussed and questioned Mr. Rowland about pole attachment agreements. He indicated that he did not wish to enter into pole agreements and, therefore, he had no rates and there were none now for attachments. Those that were in effect from past agree-

ments would be continued to the end of the agreement, but he hoped that they would not have to be renewed. We pointed out that General Telephone in Bloomington-Normal owned approximately 25% of the poles and that the cities most likely would not like an increase by even 25% the number of poles in the city. Mr. Rowland acknowledged this and pointed out that this was also a good reason that his subsidiary should receive the franchise since they would be operating under a lease and, therefore, there would be no need to place poles. Mr. Rowland indicated that if we would sign the lease agreement with Gen Tel he felt that he could get his subsidiary to pull out and he reviewed what he considered to be the major attraction to a lease agreement.

(6) On the night of August 15, 1968, I attended a joint meeting of the city councils of Bloomington and Normal, which was held to review the bids for the CATV franchise. General Telephone Company of Illinois was represented at this meeting by Mr. James Malone, Central Division Manager. Mr. Malone was asked if General Telephone would enter into pole attachment agreements. His reply was that no one had asked them for such agreements. He was asked if General Telephone had a policy of granting pole attachment agreements to which Mr. Malone replied that they would grant pole attachment agreements to other utilities. When Mr. Malone was pressed on this point as to whether General Telephone would grant pole attachment agreements to a CATV company other than their own, he said he had no answer either "pro or con".

/s/ TIMOTHY R. IVES
(Timothy R. Ives)

Sworn to and subscribed before me
this 25th day of September, 1968.

/s/ DOROTHY COLEMAN.

My Commission expires: August 3, 1969

AFFIDAVIT

Date: September 27, 1968
BLOOMINGTON, ILLINOIS

I, Merrick C. Hayes, being first duly sworn, do hereby depose and state that I am an attorney licensed to practice law in the State of Illinois and am practicing in the City of Bloomington, McLean County, Illinois.

That in May of 1968, I accompanied Mr. Loring Merwin and Mr. Timothy Ives, to the office of Mr. William Rowland, President of General Telephone Company of Illinois, in Bloomington, Illinois. Mr. Ives had previously contacted representatives of the telephone company as President of Bloomington-Normal Perfect Picture Co. in an effort to secure a pole attachment agreement with the telephone company for the purpose of the CATV installation in Bloomington-Normal. Mr. Ives' company was in the process of preparing its proposal or bid to the two cities and as there was a requirement of a pole attachment agreement, the meeting which I attended was to secure same. Mr. Rowland in response to our inquiry indicated that they felt that they had to be a part of any CATV installation and that unless we would agree to lease the entire system from the telephone company according to a tariff which they had previously filed they would encourage one of their affiliate companies to apply for a system to secure their participation. Mr. Rowland indicated that for numerous reasons they were not interested in making any pole attachment agreements and that we should consider whether we would agree to lease the entire facility from them or be confronted with the application by their affiliate without the benefit of any pole attachment agreements with the second alternative. We left the meeting with no other alternatives offered to us and the pole attachment agreements out of our reach.

The above information is true to the best of my personal knowledge and belief.

/s/ MERRICK C. HAYES
Merrick C. Hayes

Subscribed and sworn to before me this 27th day of September, 1968.

/s/ MARY DOUGAN
Notary Public

AFFIDAVIT

September 26, 1968

Bloomington, Illinois

I, Loring C. Merwin, being first duly sworn, do hereby depose and state that I am a director of Bloomington-Normal Perfect Picture Company and that the following facts are true to the best of my personal knowledge and belief:

On Friday afternoon, May 10, 1968, I attended a meeting at the office of Mr. William C. Rowland, President of General Telephone Company of Illinois. Also present were Timothy R. Ives, President of Perfect Picture and Merrick Hayes, attorney for that corporation.

Our principal purpose in arranging this meeting with Mr. Rowland was to discuss with him the possibility of a pole attachment agreement in the event that Perfect Picture Corporation was the successful applicant for the CATV franchise at Bloomington-Normal, Illinois. Mr. Ives had previously discussed this matter with other members of the GenTel organization but had been unable to get a firm reply. Each time the subject was broached the GenTel people had said that although they did have pole attachment agreements elsewhere in Illinois it was "becom-

ing company policy" not to make such agreements. On each occasion they urged us to make our bid on the basis of a cable system to be constructed by GenTel and leased by them to us.

In the meeting with Mr. Rowland we said that we would like a definite answer as to whether or not GenTel would make a pole attachment agreement. We said that we had analyzed their proposed tariff for a system to be rented to us and we felt that it was unreasonably high. We said that we had decided to construct our own system and felt that a pole attachment agreement would be essential inasmuch as GenTel presently owns about 40% of the utility poles in Bloomington-Normal and has an agreement with Illinois Power Company whereby the two companies will eventually each own 50% of the poles. We pointed out that we had been assured by Illinois Power Company that they would give us an attachment agreement on the poles owned by them.

We further pointed out that if we were forced to put in our own poles at locations where the present poles are owned by GenTel there would be a very strong adverse public reaction. One of the primary reasons for CATV, aside from better television service, is to enhance the appearance of the city by removing unsightly rooftop antennas and we pointed out that this esthetic gain would be more than negated by the unsightliness of additional poles throughout the two communities. We felt that unless we could use all of the existing utility poles it would make it next to impossible for us to be the successful bidder for the CATV franchise. Also, the ordinance of both Bloomington and Normal required that the successful applicant have pole attachment agreements within 30 days after award of the franchise.

Mr. Rowland said that he sympathized with our point of view but that it was indeed becoming the definite policy of GenTel of Illinois not to make pole attachment agreements.

He spoke of the present dual use with Illinois Power, the necessity of proper spacing between installations on the poles, the potential interference or damage from third party use, etc. He ended that part of the conversation by saying (I believe this is an exact quotation) "I hope I never have to sign another pole attachment agreement."

Mr. Rowland then urged us to reconsider allowing GenTel to construct a rental system for us. He strongly indicated that if we would be willing to base our bid to the two cities on such a rental system, he believed he could persuade their affiliate, General Telephone and Electronics Communications, Inc., to drop out as an applicant for the franchise.

/s/ LORING C. MERWIN
Loring C. Merwin

Sworn to and subscribed before me
this 27th day of September 1968

/s/ CHAS. H. CUMMING
Notary

My Commission expires: June 29, 1972

AFFIDAVIT

Date: October 14, 1968

Norfolk, Virginia

I, Jimmie S. Key, being first duly sworn, do hereby depose and state that I am Assistant to the Vice President and General Manager of TeleCable Corporation and that the following facts are true to the best of my personal knowledge and belief:

(1) G. T. and E. Communications submitted a CATV franchise bid to the towns of Bloomington and Normal, Illinois

stating that they would lease a wide band distribution system from the local General Telephone subsidiary.

(2) In a meeting before Council members from both communities G. T. and E. Communications again stated and presented a written brief that this was their intent.

(3) The purpose of this meeting was to determine which of the three CATV applicants should be awarded the franchise. A major issue was to determine which applicant could provide a service first, as is evident by three of Normal Town Attorney Robert Fleming's four questions:

- * (a) When will you start construction?
- (b) Will you seek a new franchise when CATV grows beyond its presently anticipated services?
- * (c) (Of Mr. Malone, General Telephone of Illinois) Would General Telephone allow applicants other than G. T. and E. Communications to use its facilities?
- * (d) What is the effect of the Section 214 requirement which could affect G. T. and E. Communications?

(4) When other applicants contended that G. T. and E. Communications would need approval from a Section 214 hearing before starting construction, G. T. and E. Communications representatives replied that, counter to their two written proposals and oral statements, they could avoid a hearing by building a distribution system rather than leasing broad band service. By circumventing the hearing, G. T. and E. Communications would not be delayed in beginning construction of its CATV system.

(5) Mr. James Malone, introduced as a representative of General Telephone of Illinois, was called upon to clarify his company's policy toward CATV applicants other than G. T. and E. Communications. (This was occasioned by TeleCable Corporation having conditioned its bid on being able to negotiate pole attachment agreements.) He replied:

- (a) General Telephone will give anyone service under their Tariff # 1; Section 34 filed with the ICC.

When asked if General Telephone has any similar policy regarding pole attachment agreements he stated:

- (b) General Telephone regularly grants pole attachment rights to other public utilities.

At this point the chairman was ready to proceed but was reminded by a Perfect Picture representative that CATV was not a public utility, and that, therefore, Mr. Malone's answer did not mean that CATV operators would be given pole attachment rights. The chairman replied that Mr. Malone had said other CATV's would be granted attachment rights, upon which Mr. Malone stated:

- (c) He had not said CATV's would be allowed on General Telephone's poles.

When again asked by the chairman if General Telephone of Illinois would grant the other two applicants attachment agreements, Mr. Malone replied:

- (d) He had no answer.

I hesitate to affirm that the foregoing exchange is in precise quotations. However, I am confident that I have accurately represented the trend and meaning of the questions and replies.

(6) The effect of the statements made by G. T. and E. Communications representatives and Mr. Malone was to give Council the impression that G. T. and E. Communications would not have to await results of a Section 214 hearing, and that only G. T. and E. Communications had a reasonable chance of quickly getting attachment agreements for telephone company owned poles.

(7) On October 3, General Telephone Company of Illinois applied for permission to construct a wide band distribution facility in Bloomington and Normal. This is contrary

to the statements and representations made at the public hearing; the statements and representations upon which their franchise award was based.

/s/ JIMMIE S. KEY
(Jimmie S. Key)

Sworn to and subscribed before me
this 17th day of October, 1968.

/s/ BETTY S. WILLIAMS

My Commission expires: June 6, 1971

AFFIDAVIT

Date: October 14, 1968

Norfolk, Virginia

I, Rex A. Bradley, being first duly sworn, do hereby depose and state that I am Vice President and General Manager of TeleCable Corporation and the following facts are true to the best of my personal knowledge and belief:

(1) On the night of August 15, 1968, I attended a joint meeting of the city councils of Bloomington and Normal, Illinois, which had been called for the purpose of hearing representatives of competing companies, who were applicants for a CATV franchise in the two cities.

(2) Representatives of three CATV companies, who were applicants for the franchise, were present. These companies were "Bloomington-Normal Perfect Picture" represented by Mr. Timothy R. Ives, Mr. Loring C. Merwin and Mr. Hayes; "G. T. & E. Communications" represented by an attorney whose name was Davis and several persons whose names are not known to me; "TeleCable Corporation" represented by Rex A. Bradley and Jimmie S. Key. In addition, Mr. Malone, district manager (or possibly divi-

sion manager) of General Telephone Company of Illinois was present.

(3) In the discussion it was brought out that the City Councils were anxious that cable television service to the community commence at the earliest possible date. From the discussion it appeared that the application of "Perfect Picture," which offered the most acceptable rates was being rejected because it had indicated that it would not commence construction until after favorable consideration on a waiver request to be submitted to the FCC, requesting authority to import distant signals. It further appeared that "TeleCable's" rates, after rejection of "Perfect Picture's" bid, were considered most acceptable, thus giving TeleCable the favored position (since TeleCable had stated that construction would begin with no plan to carry distant signals initially).

(4) The presiding Mayor, City Attorneys, and members of the two Councils questioned representatives of each of the companies making application, asking questions designed to establish which of the applicants could first render cable television to the communities if a franchise were awarded.

(5) In response to a specific question, representatives of G. T. and E. Communications stated that there would be no delay to the necessity for obtaining a "certificate of convenience and necessity" since G. T. and E. Communications would own and operate the system rather than lease it from General Telephone Company of Illinois, and under this arrangement, the certificate would be unnecessary.

(6) Since TeleCable had qualified its bid indicating it could start construction only after it had negotiated a pole attachment agreement with General Telephone Company of Illinois, the Mayor (or the City Attorney) asked Mr. Malone of General Telephone Company for a statement of General Telephone Company policy regarding lease of space on company poles. Malone stated that it was company policy to lease space to "public utilities." The spokesman for

the City then asked whether General Telephone of Illinois would lease space to "TeleCable" or "Perfect Picture" if the franchise were granted to either. Malone said " I don't know, we have no policy on that" or words to that effect.

(7) In the course of these discussions the apparent intent and the result was to create the impression with both Councils that G. T. and E. Communications could commence CATV operations before either "Perfect Picture" or "TeleCable" because G. T. and E. Communications could arrange pole rights with General Telephone Company of Illinois, while neither "Perfect Picture" nor "TeleCable" could be assured of pole rights; and that G. T. and E. Communications would not be required to obtain a certificate of convenience and necessity.

/s/ REX A. BRADLEY
(Rex A. Bradley)

Sworn to and subscribed before me
this 15th day of October, 1968.

/s/ BETTY S. WILLIAMS

My Commission expires: June 6, 1971

General Exhibit 29

G T & E COMMUNICATIONS INC.
730 THIRD AVENUE, NEW YORK, N. Y. 10017

WENTON F. STEWART
VICE PRESIDENT &
GENERAL MANAGER

March 28, 1969

Mr. William C. Rowland, President
General Telephone Co. of Illinois
1312 East Empire Street
Bloomington, Illinois 61701

Dear Bill:

As you know, by letter dated October 23, 1968, GT&E Communications Inc. requested General Telephone Co. of Illinois to provide the CATV distribution facilities for the City of Bloomington and the Town of Normal, Illinois.

As you also are aware, the delays encountered by your people in processing the requested Section 214 Application filed with the FCC have made it impossible for us to meet our franchise obligations to the City of Bloomington and the Town of Normal. Accordingly, it has been necessary for us to make arrangements to construct these facilities ourselves.

Consequently, in view of the foregoing, we hereby withdraw with regret our request for service under your Wide Spectrum Services Tariff for the City of Bloomington and Town of Normal, Illinois.

I assume that you will advise me if my understanding is not correct that there are no charges due your company from GT&E Communications Inc. under said tariff due to cancellation of this service order prior to commencement of service or special construction.

Very truly yours,

/s/ WENTON F. STEWART
Wenton F. Stewart

WFS/hf

General Exhibit 30

April 9, 1969

Mr. Ben F. Waple, Secretary
Federal Communications Commission
Washington, D. C. 20554
Re: File No. P-C-7213

Dear Mr. Waple:

This is to advise you that our customer having cancelled its order for service by letter dated March 28, 1969, we are hereby withdrawing our application filed in the above file number.

Respectfully submitted,

GENERAL TELEPHONE COMPANY OF ILLINOIS

Original Signed By

By VERNON C. MAULSON
Vernon C. Maulson
General Attorney

CC: The Normal Town Council
The Bloomington City Council
Hogan & Hartson
Dow, Lohnes and Albertson
GT&E Communications Inc.

General Exhibit 33

**CATV
COMMUNITY ANTENNA TELEVISION
CONSTRUCTION**

AGREEMENT

JERROLD

FIRST IN CATV

**The nation's largest, most experienced manufacturer/
supplier of CATV equipment and services**

COMMUNITY ANTENNA SYSTEM

CONSTRUCTION AGREEMENT

between

JERROLD ELECTRONICS CORPORATION

and

**GT&E COMMUNICATIONS INC.
Bloomington and Normal, Illinois**

COMMUNITY ANTENNA SYSTEM

CONSTRUCTION AGREEMENT

**THIS AGREEMENT made the 17 day of March 1969, by and
between JERROLD ELECTRONICS CORPORATION ("JERROLD")
and GT&E COMMUNICATIONS INC. ("PURCHASER"),**

WITNESSETH:

**PURCHASER desires JERROLD to construct a Community
Antenna Television System ("SYSTEM") at Bloomington
and Normal, County of McLean, State of Illinois, and JER-
ROLD is ready, willing and able to construct such a SYSTEM**

for PURCHASER upon the terms and conditions hereafter set forth:

NOW THEREFORE, the parties hereto intending to be legally bound do hereby agree as follows:

FIRST: The SYSTEM to be supplied by JERROLD hereunder shall include:

A. A Distribution System consisting of messenger strand and related pole line hardware, amplifiers and related equipment, which shall contain approximately 125 miles of distribution system as measured by messenger strand and approximately 50 miles of buried Distribution System as measured by cable route; extending from the Antenna site to and throughout the community, communities or parts thereof to be served. JERROLD shall perform the following detailed items of work as required to complete the SYSTEM in accordance with the System Specifications as set forth in Exhibit "A" attached hereto and made a part hereof:

1. Supply and install the anchors, guys, pole line hardware and messenger strand required for the Aerial Distribution System and pedestals, conduit, manholes and handholes required for Buried Distribution System; and
2. Furnish and install all Starline Twenty Series single ended amplifiers, splitters, equalizers, power supplies, electronic equipment and miscellaneous items required in the Distribution System; and
3. Test each Phase of the Distribution System upon completion by utilizing the output signals from PURCHASER's Antenna Site or signals from a suitable substitute source to permit the following testing. All signals distributed shall be properly adjusted in accordance with the System Specifica-

tions. The same signals shall be used to balance, adjust and record signal levels throughout the main trunk line cables of the SYSTEM.

- B. The supply and installation of JERROLD directional coupler type Flex-i-Taps, (less bottom plate) in the Aerial Distribution System and JERROLD Model MM-() taps in the Underground Distribution System, at locations specified by PURCHASER.
- C. Instruction of PURCHASER's employees during the course of construction with respect to the maintenance and operating procedures required to be performed in connection with the SYSTEM.
- D. Attendance of PURCHASER's technical personnel at a regular session of JERROLD's Community Antenna Television School in Philadelphia, Pennsylvania; provided, however, that PURCHASER shall bear the cost of travel and living expenses.
- E. Anything herein to the contrary notwithstanding, JERROLD may substitute other items of material and equipment for those specified in any Exhibit hereto provided that such substitutions are, in JERROLD's opinion, of equal or better quality and comply with System Specifications, and provided such substitutions are approved by PURCHASER in writing.
- F. Construction of the SYSTEM shall be as follows:
 - 1. The SYSTEM shall be constructed by JERROLD and offered to PURCHASER for acceptance in four (4) Phases containing the following:
 - Phase I— Approximately 53.6 miles of Distribution System.
 - Phase II— Approximately 27 miles of Distribution System.

Phase III— Approximately 50 miles of
Distribution System.

Phase IV— Approximately 45 miles of
Distribution System.

2. Construction shall start upon execution of this Agreement as provided for in Article SECOND hereof and construction shall be completed as follows:

Phase I— June 19, 1969.

Phase II— September 19, 1969.

Phase III— December 19, 1969.

Phase IV— March 19, 1970.

JERROLD shall maintain the above schedule of construction, provided, that construction is not delayed by causes or contingencies beyond JERROLD's control as provided for in Article SECOND or Paragraph 5, Exhibit "B", or as a result of JERROLD's inability to perform those extra responsibilities that may be authorized by PURCHASER as listed in Paragraph B, Article SECOND. For purposes of this Subparagraph, JERROLD shall notify PURCHASER when it begins to test each Phase of the SYSTEM pursuant to Article FIFTH and PURCHASER's engineers shall accompany JERROLD personnel to verify that the SYSTEM meets the system Specifications using the tests called for by the Specifications. PURCHASER's acceptance of JERROLD's notification of completed testing of each Phase shall constitute completion of construction hereunder.

3. Should JERROLD fail to complete any Phase by the schedule noted in Paragraph F.2, Article FIRST, then JERROLD shall pay to PURCHASER a penalty at the rate of Three hundred dollars (\$300.00) per

day. Said penalty shall be applicable to each Phase of the SYSTEM. This penalty provision shall cease when the completed testing notification is accepted as provided for in Sub-paragraph 2, hereof and shall not apply where additional work may be required due to PURCHASER's refusal to accept a Phase of the SYSTEM. This provision shall not be applicable if PURCHASER and/or JERROLD is served with a Cease and Desist Order for non-conformance with FCC regulations or other parties.

SECOND:

A. PURCHASER agrees, at its own cost and expense, to perform the following:

1. Provide and maintain sufficient access roads to and from the Antenna Site as well as all necessary rights-of-way for the cable runs from the antenna site to the community or communities to be served.
2. Obtain all franchises, easements, rights-of-way, pole line agreements, permits, clearances, licenses and file any forms which may be required for the construction of SYSTEM and the operation thereof; including, but not limited to, those required by any Governmental agency or instrumentality, whether Federal, State or Local. JERROLD will supply manpower and drawings necessary to show the specific routes requiring right-of-way clearance not granted by either franchise or pole attachment agreements; thereafter PURCHASER shall provide JERROLD with "Notice-to-Proceed" after procuring such rights-of-way as may, in PURCHASER's opinion, be necessary.
3. Supply to JERROLD the location that all Flex-i-Taps and Model MM taps are to be installed.

4. Supply all coaxial cable required to construct the SYSTEM.
 5. Approve in writing all SYSTEM drawings prepared and submitted by JERROLD to be used in SYSTEM construction.
- B. PURCHASER agrees at its own cost and expense, to authorize JERROLD to perform the following:
1. Connect at all power supply locations the required 115 V.A.C. power as well as supply all power meters.
 2. Provide for the rearrangement of the clearances on all poles so as to conform to all applicable codes, ordinances and utility company regulations.
 3. Provide in place all poles and ducts required to be used in the construction of the SYSTEM or any part thereof.
 4. Obtain all agreements necessary to dig trenches and to place and secure all guys and anchors which are to be used in the construction of the SYSTEM or any part thereof.
- C. JERROLD shall not be required to commence or continue with construction in any Phase of the SYSTEM unless and until PURCHASER shall have satisfied the requirements set forth above for the Area covered in that Phase and provided JERROLD, in writing, with a "*Notice to Proceed*" stating that construction can commence; provided, however, that if PURCHASER requests in writing, that JERROLD proceed with construction of a particular Phase and PURCHASER has not satisfied one or more of the above requirements pertaining to that Phase, such as obtaining valid franchises, rights-of-way or permits or the permission or authorization of the Federal Communications Commission or any other agency, whether Fed-

eral, State or Local, as may be necessary, JERROLD shall be and hereby is indemnified by PURCHASER against any claims, suits or other liability, including counsel fees and other costs of litigation incurred as a result thereof. In addition, JERROLD may refuse to proceed if the working conditions are unsafe and if it does proceed, it shall be entitled to the rights provided for in Article THIRD.

THIRD:

- A. The following shall be used to establish the initial estimated price for each Phase of the SYSTEM and for adjustments to the price upon completion of construction:
 - 1. The basic Distribution System price for aerial construction shall be Two thousand five hundred forty-eight dollars (\$2,548.00) per strand mile.
 - 2. The Basic Distribution System Price for underground construction shall be Three thousand eight hundred twenty-five dollars (\$3,825.00) per mile.
 - 3. For each directional coupler Flex-i-tap supplied and installed by JERROLD during construction, \$11.50 each.
 - 4. For each Model MM tap supplied and installed by JERROLD during construction, \$30.50 each.
- B. PURCHASER shall pay JERROLD for the SYSTEM the Basic Contract Price of Five hundred nine thousand seven hundred fifty dollars (\$509,750.00) as follows:
 - 1. The estimated value of each Phase of the SYSTEM calculated at the rates specified in Paragraph "A" hereof, as follows:
 - a. Twenty-five (25%) percent of the estimated Phase value upon receipt of JERROLD's notification of start of construction of that Phase; and

- b. Twenty-five (25%) percent of the estimated Phase value when approximately fifty (50%) percent of the work to be done in that Phase has been completed; and
 - c. Twenty-five (25%) percent of the estimated Phase value upon completion of the physical construction of that Phase by JERROLD; and
 - d. The balance of the Phase value upon its acceptance by PURCHASER.
- C. The Basic Contract Price shall be adjusted as a result of the following:
- 1. If more or less than 125 miles of aerial SYSTEM plant and 50 miles of underground SYSTEM plant are constructed in the SYSTEM, as measured by messenger strand or buried cable route, which amount of SYSTEM plant shall be determined by representatives of JERROLD and PURCHASER by measuring each Phase of the SYSTEM plant completed, then the Basic Contract Price shall be increased or decreased, using the cost rates for such adjustment as specified in Paragraph A hereof.
 - 2. In the event that it is necessary, or PURCHASER desires to make additions, deletions and/or revisions to SYSTEM, PURCHASER shall request the same in writing. In the event JERROLD agrees to make such additions, deletions and/or revisions, it shall submit a written price quotation, including terms of payment with respect thereto; and if PURCHASER shall accept such quotation in writing within ten (10) days of its receipt, JERROLD shall, forthwith, undertake to make such additions, deletions and/or revisions as are provided for therein and the Basic Contract Price shall be adjusted accordingly.

D. In addition to the Basic Contract Price, PURCHASER shall also pay:

1. For each Flex-i-tap (less bottom plate) supplied and installed by JERROLD, \$11.50 each, which amounts shall be invoiced upon completion of each Phase of the SYSTEM for the quantities installed therein.
2. For each Model MM tap in pedestal supplied and installed by JERROLD, \$30.50 each, which amounts shall be invoiced upon completion of each Phase of the SYSTEM for the quantities installed therein.
3. All federal, state and local taxes which may be assessed or imposed upon the PURCHASER of SYSTEM will be the liability of the PURCHASER. PURCHASER shall also be liable for any State of Illinois sales and use taxes that may be assessed against JERROLD due to construction of the SYSTEM.
4. If PURCHASER fails to fulfill any of its obligations hereunder and JERROLD is thereby delayed, interrupted or prevented from constructing SYSTEM in a continuous and orderly manner, PURCHASER shall pay to JERROLD, in addition to the contract price hereunder, JERROLD's costs plus ten (10%) percent for each construction crew idled, which amount shall become due and payable to JERROLD within ten (10) days from the date on which such charges are invoiced to PURCHASER.

FOURTH:

This Agreement between JERROLD and PURCHASER is subject to all of the General Contract Conditions set forth in Exhibit "B" attached hereto and made a part hereof.

FIFTH:

- A. JERROLD shall notify PURCHASER in writing at least ten (10) working days prior to the date JERROLD commences testing in each Phase of the SYSTEM as

provided for in Article FIRST and Exhibit "A" hereof, and PURCHASER shall be conclusively presumed to have accepted that Phase of the SYSTEM (i) upon acceptance of notice of completion of said testing. (PURCHASER shall have the right to submit to JERROLD a written list of exceptions thereto on or before completion of said testing) or (ii) upon the use of the SYSTEM or any of its component parts by PURCHASER. Upon JERROLD's correction of the written list of exceptions and upon accepting a Phase of the SYSTEM as aforesaid, PURCHASER shall execute and deliver to JERROLD an Acceptance Certificate in the form of Exhibit "C". Upon acceptance of a Phase of the SYSTEM by PURCHASER, JERROLD shall thereafter, be released of any further responsibility with respect to that Phase of the SYSTEM, subject to the warranty provisions set forth in the General Contract Conditions, Exhibit "B" hereto.

- B. Within sixty (60) days after each Phase of the SYSTEM is accepted by PURCHASER, JERROLD shall deliver to PURCHASER three (3) copies of all drawings marked "as-built", containing an electronic layout of that Phase of the SYSTEM. JERROLD shall supply the input and output signal levels, in decibels above one millivolt, measured across seventy-five (75) ohms for picture carrier levels on all operating channels for all amplifier locations except feeder line extender amplifiers.

SIXTH:

All notices required to be given under this Agreement shall be sent by Registered or Certified mail, addressed to JERROLD, Attention: James A. Forgey, at 401 Walnut Street, Philadelphia, Pennsylvania, 19106, and addressed to PURCHASER at 730 Third Avenue, New York, New York, 10017.

SEVENTH:

This Agreement and the Exhibits attached hereto constitute the whole agreement between the parties hereto and shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto with respect to the subject matter hereof. Neither of the parties, in executing or performing this Agreement, is relying upon any statement or information to whomsoever made or given, directly or indirectly, verbally or in writing, by any individual or corporation, except as specifically provided herein. All representations, warranties, indemnities and agreements made herein or in any certificate provided for herein shall survive PURCHASER's acceptance of SYSTEM regardless of any investigations made by the parties.

EIGHTH:

When duly executed, this Agreement shall inure to the benefit of and be binding on, the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have caused this Agreement to be executed by their duly authorized officers, and their corporate seals, duly attested, to be hereunto affixed as of the day and year first above written.

JERROLD ELECTRONICS CORPORATION ("JERROLD")

By: /s/ R. J. [Illegible signature] Pres.

ATTEST: /s/ James J. Wilson, Asst. Secy.

GT&E COMMUNICATIONS INC. ("PURCHASER")

By: /s/ W. T. Stewart, Vice President & Service
Manager

ATTEST: /s/ Daniel McKenna, Asst. Secretary

EXHIBIT "A"

SYSTEMS SPECIFICATIONS

I. GENERAL

The wide band spectrum system as specified herein shall include all necessary electronic equipment, power supplies, controls, coaxial cables and other parts, components and equipment necessary to provide a complete and operational system.

The system shall be installed all in accordance with the best engineering practices. The installation shall conform to National Electrical Safety Code, and GENERAL SYSTEM PRACTICES and shall conform to all City and County Codes and Ordinances.

System maps will clearly indicate the types of cable, electronic equipment and other accessories and components. The system design and layout shall be on 30" x 30" maps with the scale not less than one inch equals 200 feet. Maps will have a 1/2" border on top and sides and 1 1/2" border on the bottom and will not cover an area larger than one section (1 mile square). All symbols used on "as-built" drawings will conform to GSP 018-100-010. All electronic equipment as well as passive devices utilized in the system shall be supplied with complete operating and installation instructions. Amplifiers and other active devices shall be provided with circuit diagrams, alignment and maintenance procedures where required.

The initial system shall be designed so as to provide for distribution of all television signal channels on VHF Channels 2 through 13 and shall also provide for distribution of FM Radio signals in the frequency range of 88 to 108 MHz. The System shall be built with the capability of being converted to a 20 Channel System by suitable equipment substitution or modification.

II. SYSTEM PERFORMANCE

The System shall be capable of delivering all NTSC color and monochrome signals to STANDARD EIA television receivers, both monochrome and color on Standard VHF Channels 2 through 13 and Standard FM Signals to FM receivers without modification or other attachments. The Signals shall be distributed to individual subscribers television sets without noticeable degradation of color, fidelity picture information, audio distortion or cross-channel interference.

The SYSTEM signal-to-noise ratio shall be not less than 44 db for up to 32 amplifiers, 43 db for up to 40 amplifiers or 42 db for 50 amplifiers in cascade as measured on any VHF Television Channel or FM Channel.

The hum modulation of the picture signal observed at any point throughout the System shall be less than 3%.

The echo or ghost content in the received pictures over the transportation system shall be no more annoying than a single well displaced video echo 30 db down. The echo response of the feeder lines shall be -20 db minimum without any taps on the line.

At any point in the System, cross-modulation shall be 48 db below the level of any video carrier transmitted over the System and no visible components of video shall appear on a blank white screen on any channel of the System with all other channels operating with modulation at their rated levels.

The SYSTEM shall deliver a nominal signal level of +3 db to +10 db as measured across 75 ohms at the grounding block on a drop of not more than 100 feet of RG-59/U coaxial cable or equivalent. This signal level shall not vary more than plus or minus 3 db.

Radiation from the coaxial cable or electronic equipment shall not exceed the limitations imposed by the FCC rules

and regulations. Properly installed coaxial cable and electronic equipment shall have a radiation level of less than 10 microvolts per meter at 10 feet as measured across 75 ohms.

The System shall be designed and rated for continuous 24 hour daily operation and temperature and environmental conditions encountered in the area with sufficient automatic level control to maintain trunk line signal level variations of not more than +2 to -1 db swing (depending upon the mean temperature for the area or average balance temperature). (Reported mean temperature 55°F).

Isolation from external radiation in the primary trunks, secondary trunks, and distribution cables, excluding drop wires, shall be greater than -85 db. This specification will be considered acceptable if the System signal-to-noise specification is met.

All 110 VAC power locations shall be protected by lightning protectors which are self-healing and circuit breakers for protection of the equipment from damage due to overload. Each 110 VAC power location shall be equipped with a suitable RF line filter.

Directional in line taps shall be used in the distribution system to serve drops unless otherwise specified in writing.

The coaxial cable fittings, connectors and all components shall have a nominal characteristic impedance of 75 ohms.

All exposed electronic equipment shall be protected against the weather by a weatherproof housing suitable for messenger, crossarm, or pole mounting. Each housing shall be constructed of aluminum or of any suitable corrosion resistant material.

III. SYSTEM DESIGN

Coaxial cable loss shall be calculated based upon the manufacturer's rated loss in db per hundred feet at 216

megacycles plus a 5% factor for anticipated cable aging or deterioration. The System shall be design installed and lined up based on an ambient temperature of 55°F with considerations for deviations based on temperature variation from 0°F to 110°F.

Trunk line amplifiers shall be spaced at 21 db intervals (derated cable loss for aging and temperature effects).

Insolation between drops shall be 40 db including drop loss of a minimum of 6 db in each leg plus splitter isolation of 28 db minimum.

All power supplies must remain in regulation with input variations from 100 to 130 volts.

The current in any cable leg must be restricted to the current rating of the components in the leg.

IV. INSTALLATION AND CONSTRUCTION

Installation and construction practices shall be in accordance with Standard Utility Practices and National Electrical Safety Code. (Utility pole line agreements, Franchise agreements, State, City and County ordinances Statutes and regulations are subject to review by JERROLD). All equipment shall be installed so as to be readily accessible for maintenance and shall be located at least 18 inches from the pole so as not to interfere with the climbing space or servicing of other pole mounted equipment. All strands shall be installed on the same side of the pole as the telephone facilities and where no telephone facilities exist, the strand shall be installed on the field side of the pole. Wherever possible the strand shall be installed on existing poles in such manner as to maintain the required spacing from telephone and power lines.

All attachments to power utilities secondaries for the purpose of powering the System equipment shall conform to the Standard Specifications governing such attachments

as defined in the joint use agreement with the respective utility.

Where such attachments standards are not specified in the joint use attachment agreement, such power attachments shall satisfy the following requirement: (Actual physical attachment to the secondary will be made by the power utility not by JERROLD).

1. A two-wire No. 12 weatherproof cable shall be installed in conduit from the service head to the cable powering unit. Automatic circuit breakers shall be provided in the energizing side of the service entrance. The neutral line shall be bonded to the cable powering unit equipment cabinet and shall in turn be grounded to a driven earth ground at the pole.
2. All equipment enclosures shall be bonded to the strand. The strand shall be grounded through a length of No. 8 solid bare copper wire clamped to a minimum 8 foot ground rod driven its full length, if no such power or telephone ground exists at least once every 10 poles.

Down guys and anchors shall be installed in such a manner as to neutralize the effects of the strand and cable strain on the poles. All such anchor guys shall be effectively grounded and electrically continuous to earth through the anchor.

V. EQUIPMENT

All active circuitry in the equipment used shall be fully transistorized and shall be equipped with electronic components for lightning protection and fuses or circuit breakers shall be provided in the equipment for protection of the equipment from damage due to overload or excessive heat.

The equipment shall be remotely powered through the coaxial cable by means of regulated transformers and equipment shall be so designed as to cause only A.C. current to flow in the coaxial cable.

The cable powering A.C. voltage shall be blocked or otherwise prevented from existing on coaxial cables feeding passive devices only.

All coaxial cables shall be terminated in their characteristic impedance of 75 ohms.

All equipment shall be equipped with coaxial cable fittings of positive moisture protection and effective electrical connection. Trunk line amplifiers, bridging amplifiers and line extender amplifiers shall be contained in a weather-proof housing capable of strand mounting.

Hardware:

- 5/8" machine bolts (for suspension clamp attachments)
- 5/8" machine bolts (for equipment location attachments)
- 5/8" thimbleye bolts (for dead-ends and guys)
- Three (3) bolt-type suspension clamps (Hubbard #8903 or equal)
- Strand ground clamp (Hubbard 8956 or equal)
- 5/8" x 6' copper-clad steel or copper ground rods
- 1/4" Seven (7) wire, Class "A" galvanized E.H.S. Steel Strand
- 1/4" preformed dead-end (1/4 GFB or equal)
- 1/4" Automatic (Reliable R-5100 or equal)
- #6 Solid, soft-drawn copper wire (Bonding and grounding)
- 3 1/2" x 4 1/2" x 5'7" wooden cross-arms (for mounting and supporting equipment cabinets)
- #12 two (2) wire service entrance weatherproof cable (from service head to fused cutout cabinet)

VI. COAXIAL CABLE

All coaxial cables used in the System shall be jacketed and shall be supplied by "PURCHASER" with physical and

electrical characteristics equivalent to those used to design the SYSTEM as follows:

- ($\frac{3}{4}$ "J) GT-52 General Cable Corporation
- ($\frac{1}{2}$ "J) GT-45 General Cable Corporation
- (.412"J) GT-50 General Cable Corporation
- ($\frac{3}{4}$ "BU) GT-52B General Cable Corporation
- ($\frac{1}{2}$ "BU) GT-B General Cable Corporation
- (.412"BU) GT-50B General Cable Corporation

VII. PROOF-OF-PERFORMANCE

Upon completion of installation of a given System section, the Contractor shall demonstrate to the satisfaction of an authorized representative of the Purchaser by means of the the measurements and tests listed below that the System is performing properly and meets the System performance specifications as listed above. The contractor shall make available all equipment necessary to perform these tests.

SYSTEM FREQUENCY RESPONSE

The System frequency response measurement shall be made with a calibrated signal generator and field strength meter which has been calibrated to the test signal generator. All TV and FM head-end signals shall be disconnected during this test. The signal generator shall be connected to the input at the point where the head-end signals are normally fed into the cable System. The field strength meter shall be connected at the terminus of the trunk line or at the end of the most remote feeder line from the System feed point. All AGC amplifiers shall be set to the manual position and adjusted for proper output levels. The signal generator shall be adjusted to provide the appropriate CW signal level as it is set, in turn, to the various TV video carrier frequencies, TV Channel band edges, and FM frequencies as required. The level at the terminal end shall be measured with the

field strength meter at the various frequencies and the data recorded. The level on the trunk lines shall not vary more than +3 db across 54 to 216 MHz and no more than ± 1 db across the bandwidth of any VHF-TV Channel.

The sweep generator method for this measurement shall not be used due to the difficulty in calibrating the test equipment to the required accuracy.

SYSTEM SIGNAL-TO-NOISE RATIO

The System signal-to-noise ratio (S/N) measurement shall be made using the same equipment, and may be recorded concurrently with the System frequency response measurement. The data recorded for the signal level of the various video carrier frequencies shall be used in the S/N ratio measurement.

The noise level shall be measured by tuning the field strength meter to each video carrier frequency of the TV channel and the CW signal from the signal generator turned off. The audio output of the field strength meter shall be carefully checked for any spurious signal and the noise level (in dbmv) shall then be recorded for each of the VHF TV channels to be carried on the System. The S/N is the difference between the CW signal level and the noise level, both expressed in dbmv.

SYSTEM HUM MODULATION

A CW signal shall be inserted into the transmission System at the picture carrier frequency of each channel for which the System is designed. The level of the signal inserted shall be approximately equal to the level normally present on the System at the point of insertion. A detector and oscilloscope shall be connected to the extremities of the trunk line System and the detected waveform observed. The ratio in percent

of the peak-to-peak AC hum variation to the average DC level observed on the oscilloscope shall be considered in the percent System hum modulation and shall not exceed three (3%) percent.

VOLTAGE REGULATION

A cable powering unit selected at random by the authorized representative Purchaser shall be connected to the AC source through a variac or other similar device and the input voltage varied from 100 volts to 130 volts. The tests for System frequency response, System signal-to-noise ratio, and System unmodulation shall be performed on one or more amplifiers being powered by the selected cable powering unit. The System should continue to meet all previous performance tests at these amplifier locations under the variations of AC input voltage.

TESTS FOR PROPER AMOUNT OF TV SIGNAL AT SUBSCRIBER MATCHING TRANSFORMER

At any subscriber tap selected at random by the authorized representative of the Purchaser, a field strength meter shall be connected at the output of the directional tap off. The signal level on each channel measured shall be the level design for this point with temperature variation taken into account.

EXHIBIT "B"

GENERAL CONTRACT CONDITIONS

APPLICABLE TO CONSTRUCTION AGREEMENT TO WHICH THIS IS AN EXHIBIT

1. During the course of construction—
 - A. Title to the SYSTEM and all of its component parts shall remain in JERROLD.
 - B. JERROLD shall at its own cost and expense, provide and maintain in full force and effect the following

insurance and certificates of such insurance shall be furnished to PURCHASER within fifteen (15) days after execution of this Agreement:

(1) Comprehensive General Liability

(a) Property Damage in the amount of \$100,000.00

(b) Personal Bodily Injury in the amount of \$100,000.00 per person and \$300,000.00 for each accident.

(2) Workmen's Compensation Insurance for its employees

(3) Automobile Liability

(a) Property Damage in the amount of \$100,000.00

(b) Personal Bodily Injury in the amount of \$100,000.00 per person and \$300,000.00 for each accident.

(4) State Compulsory Disability Benefit Insurance, if required.

C. JERROLD shall indemnify and hold PURCHASER harmless of and from any and all liability, claims and demands whatsoever, made upon it as a result of the negligence or other wrongdoing of any employee of JERROLD or of any independent contractor engaged by it.

2. During the course of construction and until all sums due JERROLD under the Construction Agreement are paid:

PURCHASER shall indemnify and hold JERROLD harmless of and from any and all liability, claims and demands whatsoever, made upon it as a result of the negligence or other wrongdoing of any employee of PURCHASER or of any independent contractor engaged by it.

3. JERROLD warrants that:

- A. All work contemplated by this Agreement shall be performed in a workmanlike manner by personnel experienced in CATV Engineering and Construction.
- B. All materials and equipment are warranted for a period of one (1) year from the date of SYSTEM completion. Any such material which shall be found to be defective during the warranty period shall be replaced or repaired, at JERROLD's option, without charge, provided written notice of the claimed defect is given within the warranty period.

4. PURCHASER warrants that:

- A. It has the necessary corporate powers and authority to make the representations and warranties contained in the Construction Agreement and to execute said Agreement; and that the execution thereof does not result in a breach of any term or condition of PURCHASER's Charter, By-Laws or any other Agreement to which it is a party.
- B. It has complied with all provisions of the rules and regulations of the Federal Communications Commission with respect to the construction and operation of the SYSTEM and particularly with (1) the provisions of Sections 74.1105 and 74.1107 thereof; i.e., that it has furnished the required notifications of its CATV operation to those persons specified in Section 74.1105 and in the manner therein provided and that it has obtained, if necessary, the approval of the Federal Communications Commission required by Section 74.1107, and (2) The Interim Procedures set forth in Paragraphs 51 through 54 of The Federal Communications Commission's Notice of Proposed Rule Making and Notice of Inquiry in Docket No. 18397, FCC Mimeo 68-1176 of December 13, 1968. In

the event that PURCHASER's construction and/or operation of said SYSTEM violates any federal, state or local law, regulation or requirement, PURCHASER agrees to indemnify and to hold JERROLD harmless against any liability, fine or other payments which it may be required to pay by virtue of said violation and construction and/or operation.

5. Anything in the Construction Agreement to which this is an Exhibit or herein to the contrary notwithstanding, JERROLD or PURCHASER shall not be liable for failure to perform under this Agreement, if prevented from so doing by reason of fires, strikes, embargoes, government orders or other requirements, acts of civil or military authorities, Acts of God, inability to secure transportation facilities, acts or omissions of carriers, or any other contingencies beyond JERROLD's control, including, but not limited to, those arising out of national defense activities, or other emergency conditions.
6. The Construction Agreement to which this is an Exhibit shall be deemed to have been made in New York, New York, and the rights and liabilities of the parties determined in accordance with the laws of the State of New York. Any controversy, claim or dispute arising out of, or relating to the Construction Agreement or the interpretation thereof, shall be settled by arbitration to be held in the City of New York, State of New York. The said controversy, claim or dispute shall be submitted to one Arbitrator to be appointed by the Philadelphia Office of The American Arbitration Association. The decision of the Arbitrator shall be final and binding on the parties, both as to law and to fact and shall not be appealable to any Court in any jurisdiction. The expenses of the Arbitrator shall be shared equally by JERROLD and by PURCHASER.

EXHIBIT "C"

ACCEPTANCE CERTIFICATE

WE HEREBY ACCEPT PHASE I, II, III OR IV OF THE SYSTEM
BEING CONSTRUCTED AT BLOOMINGTON AND NORMAL, ILLINOIS
AND CERTIFY THAT IT HAS BEEN COMPLETED IN ACCORDANCE
WITH THE CONTRACT BY AND BETWEEN JERROLD ELECTRONICS
CORPORATION ("JERROLD") AND GT&E COMMUNICATIONS INC.
("PURCHASER") DATED THE DAY OF 1969.

GT&E COMMUNICATIONS INC. ("PURCHASER")

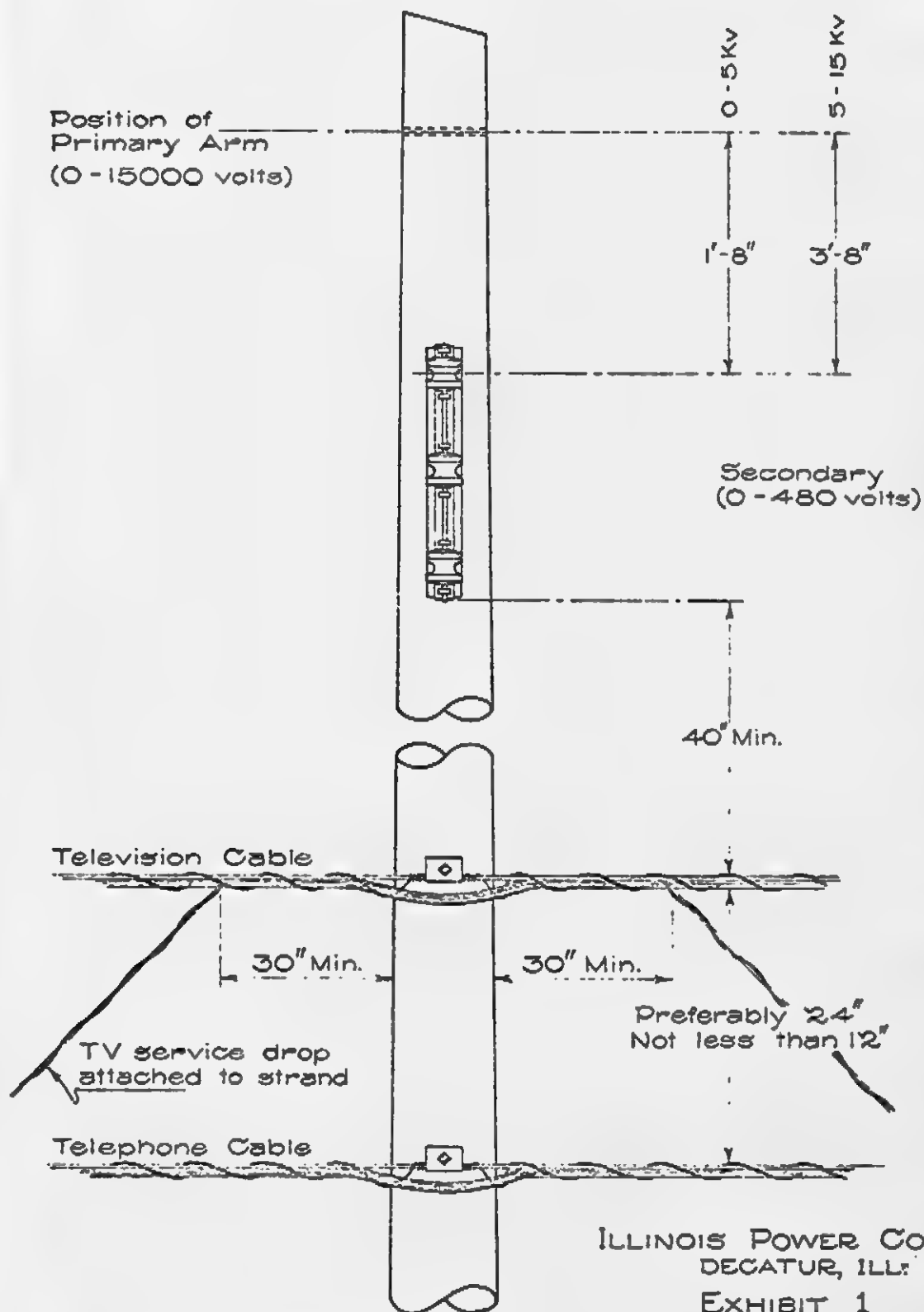
By:

WITNESSED:

Excerpts from General Ex. 35

18. Failure to enforce or insist upon compliance with any
of the terms or conditions of this agreement shall not con-
stitute a general waiver or relinquishment of any such
terms or conditions, but the same shall be and remain at all
time in full force and effect.

JOINT POWER, TELEPHONE AND TV POLE

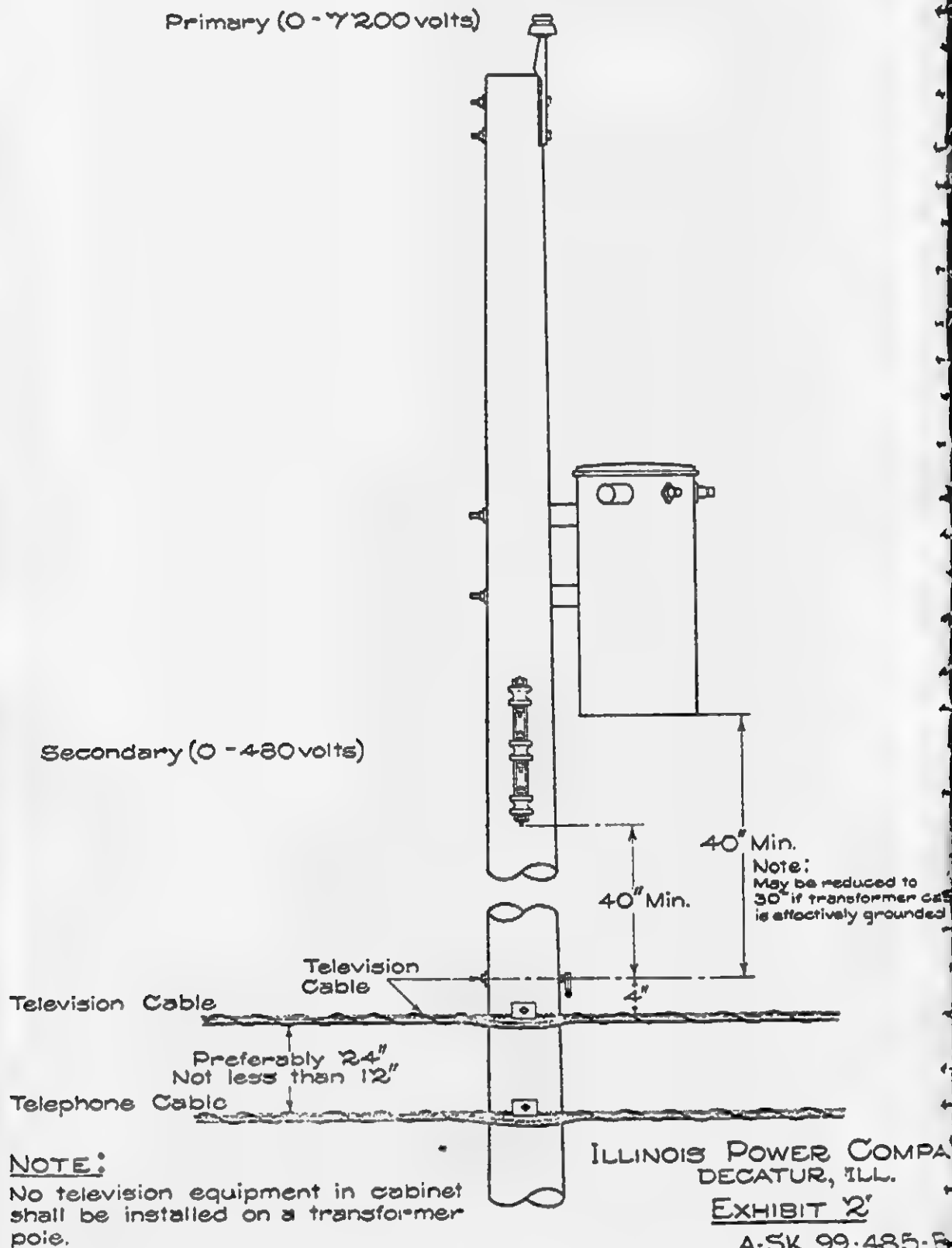
ILLINOIS POWER COMPANY
DECATUR, ILL.EXHIBIT 1

A-SK-99-485-A

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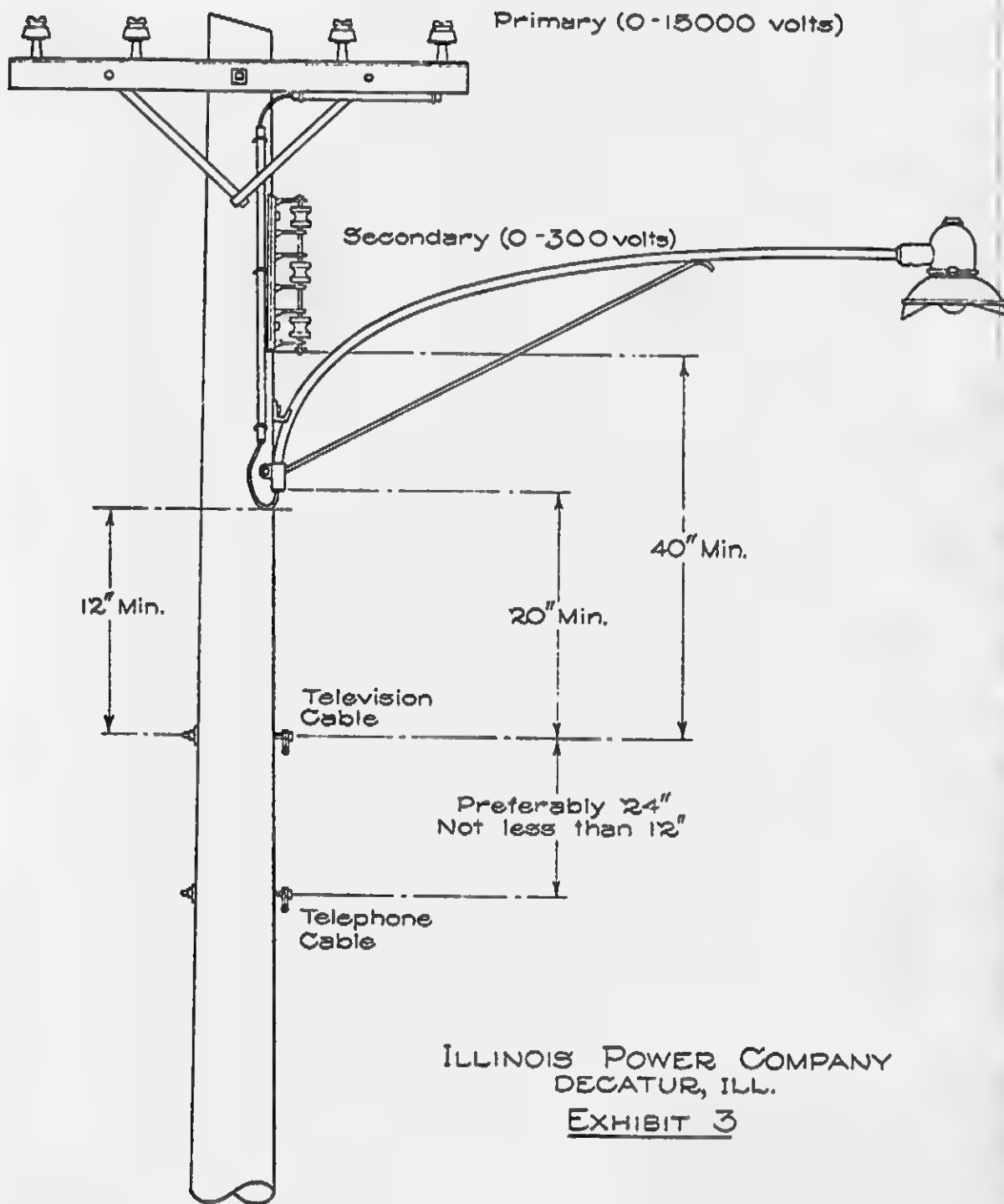
from the original bound volume

JOINT POWER, TELEPHONE AND TV POLE 2.4 KV OR 7.2 KV TRANSFORMER POLE



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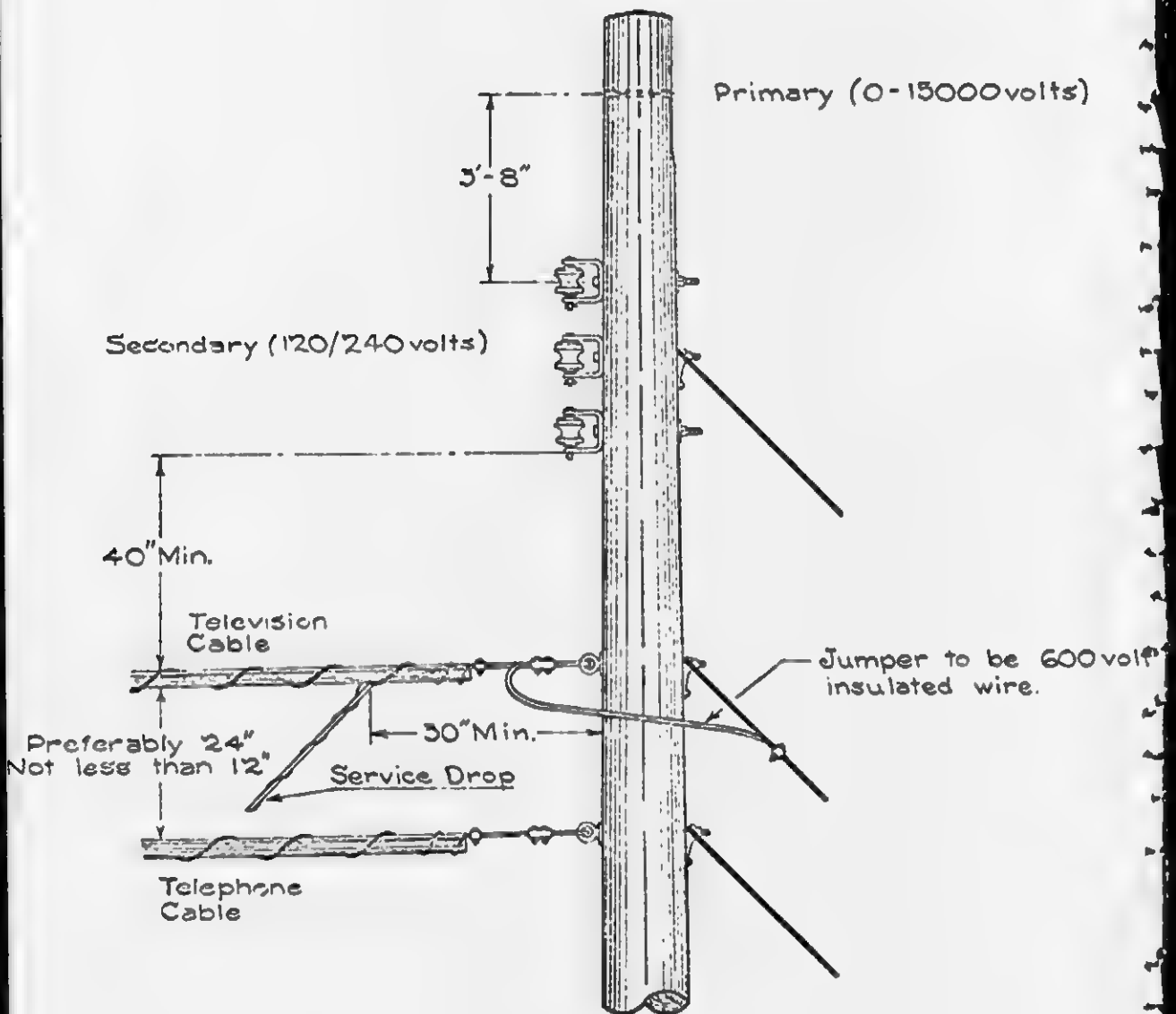
JOINT POWER, TELEPHONE AND TV POLE
STREET LIGHT POLE

A-SK.99-485-C

AVAILABLE

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JOINT POWER, TELEPHONE AND TV POLE CABLE DEAD END



ILLINOIS POWER COMPANY
DECATUR, ILL.

EXHIBIT 6

A-SK. 99-485-F

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I. P. C.

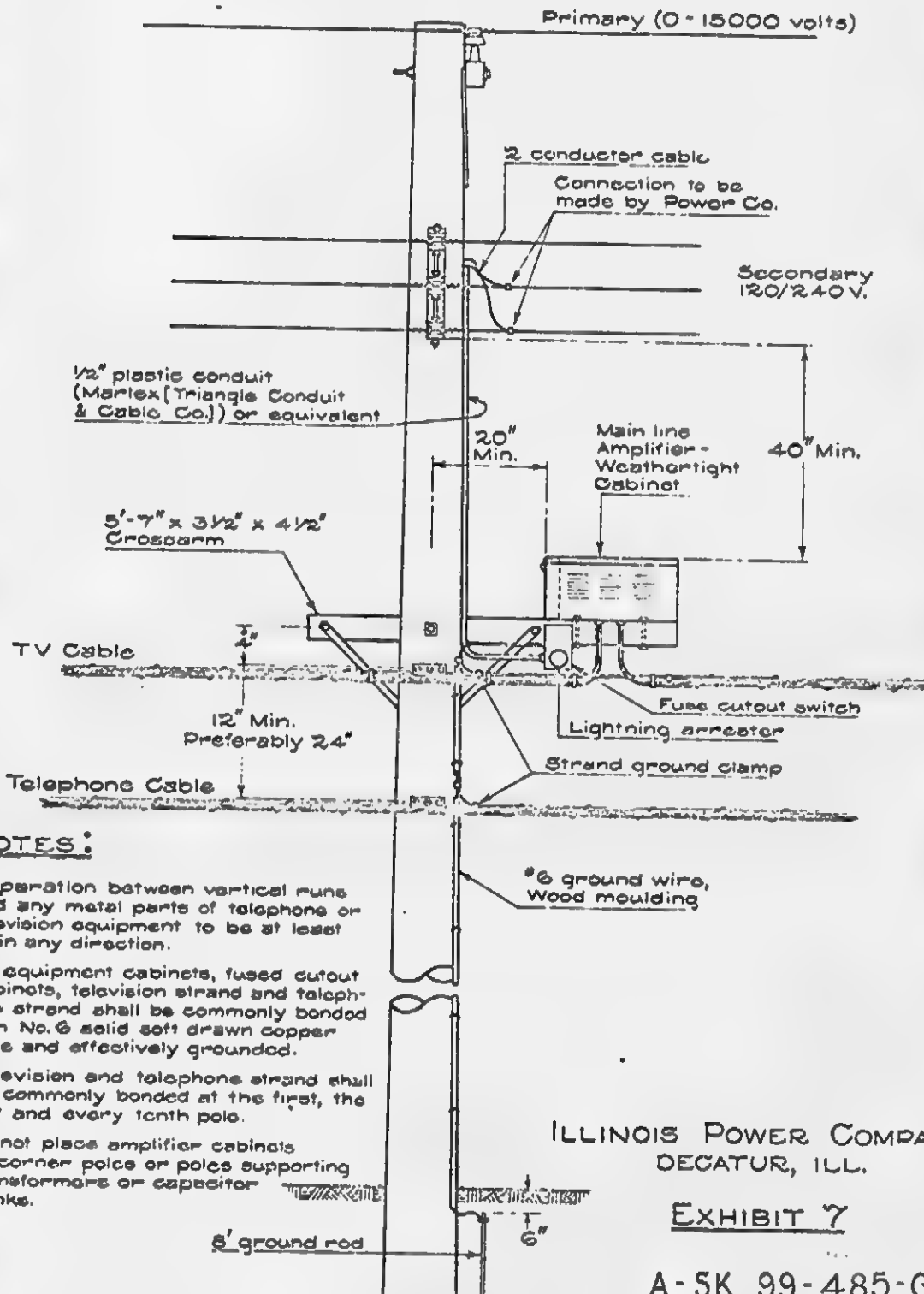
5-10-62
REV. 5-6-64JOINT POWER, TELEPHONE AND TV POLE
TELEVISION EQUIPMENT POLEILLINOIS POWER COMPANY
DECATUR, ILL.

EXHIBIT 7

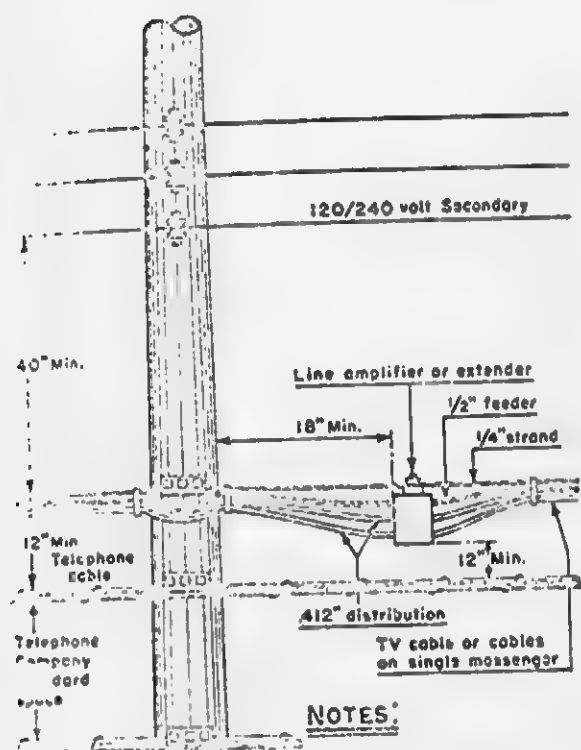
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JOINT POWER, TELEPHONE AND TV POLE TELEVISION EQUIPMENT POLES TYPICAL ARRANGEMENTS

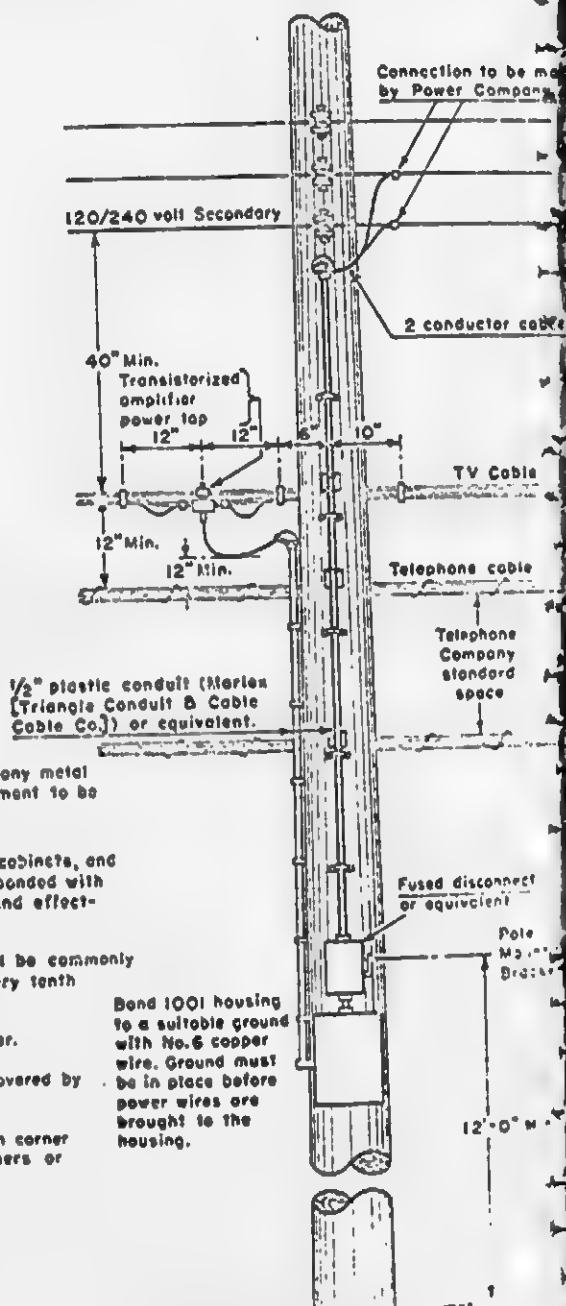
11-25-66



NOTES:

- (1) Separation between vertical runs and any metal parts of telephone or television equipment to be at least 2" in any direction.
- (2) All equipment cabinets, fused cutout cabinets, and television strand shall be commonly bonded with No. 6 solid soft drawn copper wire and effectively grounded.
- (3) Television and telephone strand shall be commonly bonded at the first, the last and every tenth pole.
- (4) Grounding conductor to be W.P. copper.
- (5) Entire length of ground wire to be covered by moulding.
- (6) Do not place power supply housing on corner poles or poles supporting transformers or capacitor banks.

CABLE CONNECTIONS TO
LINE AMPLIFIER OR EXTENDERS,
1/2" AND 412" CABLES



DETAILS OF POWER SUPPLY TO
CABLE SYSTEM SERVICE HOUSE
USING 1001 POWER SUPPLY

EXHIBIT 8

A-SK.99-4

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from the original bound volume

General Exhibit 37**GENERAL JOINT USE POLE AGREEMENT****BETWEEN****GENERAL TELEPHONE COMPANY OF ILLINOIS****AND****ILLINOIS POWER COMPANY****GENERAL****JOINT USE POLE AGREEMENT****Table of Contents**

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8.	Placing, Transferring, Rearranging and Removing Attachments
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20. Defaults
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GENERAL

JOINT USE POLE AGREEMENT

This agreement made this 6th day of February, 1967, by and between the General Telephone Company of Illinois, a corporation of the State of Illinois, and Illinois Power Company, a corporation of the State of Illinois, is effective as of the 1st day of March, 1967.

WITNESSETH:

WHEREAS, the parties hereto desire to establish joint use of their respective poles when and where joint use shall be of mutual advantage; and

WHEREAS, the conditions determining the necessity or desirability of joint use depend upon the service requirements to be met by both parties, including considerations of safety and economy, and each of them should be the judge of what the character of its circuits should be to meet its service requirements and as to whether or not these service requirements can be met properly by the joint use of poles; and

WHEREAS, the primary objective of this agreement is to set forth arrangements which effect and perpetuate the principle "that equal quantities of joint use pole plant placed by each company at its own costs will automatically provide for each company, equitable, differential, ratios of joint use pole investment in relation to each company's pole investment alone."

Now, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto, for themselves, their successors and assigns, do hereby covenant and agree as follows:

ARTICLE 1

DEFINITIONS

For the purpose of this agreement, the following terms when used herein, shall have the following meanings:

STANDARD SPACE is the following described space on a joint pole for the exclusive use of each party respectively.

(1) For the Electric Company, the uppermost four feet.

(2) For the Telephone Company, a space of two feet at a sufficient distance below the space of the Electric Company to provide at all times the minimum clearance required by General Order 160 and revisions thereto, and at a sufficient height above the ground to provide the proper vertical clearance for the lowest horizontally run line wires or cables attached in such space (except as to the portion of its said space which, by the terms of the specifications, may be occupied by certain attachments therein described of the other party).

By mutual consent for specific cases the space assigned to either or both parties may be reduced to avoid replacement of poles or to provide for other special conditions.

STANDARD JOINT USE POLE means a pole which is just long and strong enough to provide standard space for the respective parties. Specifically, a standard joint use pole when located within the confines of a public road, street or alley shall be a thirty-five (35) foot Class 5 wood pole, and when located on private right of way shall be a thirty (30) foot Class 5 wood pole.

USING PARTY shall mean the party using the pole but not having ownership in the pole.

OWNER OR OWNING PARTY shall mean the party having sole ownership of the pole.

PRIMARY USER shall mean the Electric Company or Telephone Company.

THIRD PARTY shall mean a company not a party to this agreement.

ATTACHMENTS shall include crossarms, brackets, line wires, guy wires, cables, apparatus, fixtures or any other appurtenances carried on any pole by either party.

JOINT USE shall mean the placing and maintaining of attachments of both parties upon the same pole or providing space for such attachments.

TRANSFERRING shall mean the moving of attachments from one pole to another.

REARRANGING shall mean changing the location of attachments on the pole.

REMAINING VALUE is the cost of a pole or anchor in place, less an amount equal to the accrued depreciation to date of such pole or anchor.

STANDARD JOINT USE ANCHOR shall be an anchor with double thimble-eye rod of a strength sufficient to hold a total of sixteen thousand (16,000) pounds of pull out or break load, with a safety factor of two.

CURRENT AGREED UNIT COSTS shall be the Current Telephone Company Unit Costs as shown on "Exhibit A" of Supplemental Agreement Number One.

SALVAGE is the material value of poles and anchors removed as calculated by the owner.

COST OF REMOVAL shall be owners cost to remove.

BALANCE—Jointly used poles under this agreement shall be considered to be in balance when the total number of poles of unbalance is within 2% of the total jointly used poles.

DEPRECIATION—Except as provided under Article 26 depreciation shall be as provided in "Exhibit G" of Supplemental Agreement Number One.

ARTICLE 2

VOLTAGE CONSIDERATIONS

Proposed joint use lines above 7.2 KV to ground or 15 KV between phase conductors shall require review for safety and electrical interference and approval by the Chief Engineer of the Telephone Company.

ARTICLE 3

SCOPE OF AGREEMENT

This agreement shall be in effect in common operating areas of each party in the State of Illinois and shall cover all wood poles of each of the parties now existing or hereafter erected in the aforesaid territory when said poles are brought hereunder in accordance with the procedure hereinafter provided. Each party reserves the right to exclude from joint use (1) poles which, in the Owner's judgment are necessary for its own sole use; and (2) poles which carry, or are intended by the Owner to carry, circuits of such character that, in the Owner's judgment, the proper rendering of its service now or in the future makes joint use of such poles undesirable.

ARTICLE 4

ESTABLISH JOINT USE OF EXISTING POLE OR ANCHOR WITHOUT REPLACEMENT

(a) Whenever either party desires to use an existing pole or anchor owned by the other party it shall make written application for permission on approval form.

(b) The Owner shall notify the applicant, within 10 days of receipt of application, whether the pole or anchor is excluded from joint use.

(c) If not excluded from joint use the Owner shall perform all work necessary to permit joint use of the pole or anchor including rearranging attachments and tree trimming, as provided in this agreement by Articles 8 & 12.

(d) After permission is received from Owner, the applicant shall have right to use space allocated for its attachments in accordance with the terms of this agreement after required clearances have been established.

(e) In case of emergency only application for permission and granting of permission may be handled verbally and in such cases the arrangements agreed to shall be covered by formal documents within the following 30 day period.

(f) Existing poles furnished for joint use shall be counted in maintaining the equal amount of pole quantities to be furnished annually by each party.

ARTICLE 5

ERECT NEW POLE OR ANCHOR FOR JOINT USE

(a) Notice

Whenever either party plans to erect new poles either as additions or reconstruction of its existing pole lines, it shall notify the other party in writing at least 60 days in advance of the work except in emergency when shorter notice including verbal notice subsequently confirmed in writing may be given. The party planning the work shall forward with such notice its plans showing the proposed location and character of the proposed plant. The other party shall within 10 days of receipt of notice reply in writing giving its space requirements on the new poles and such joint use poles or anchors as determined to be required shall be erected.

(b) Balance of Ownership

In arranging to erect new poles for joint use the ownership of such poles shall be determined by mutual agree-

ment with the objective that each party shall furnish one half of the total quantity of standard thirty-five (35) foot poles and one half of standard thirty (30) foot poles to be jointly used.

The party in arrears in furnishing equal quantities of poles shall normally place the additional joint use poles unless otherwise provided under this agreement.

At the end of each year the party owning the smaller quantity of standard size poles shall purchase from the other company a sufficient quantity of poles to effect a year end balance at the Current Agreed Unit Costs, as shown on "Exhibit A", less depreciation.

(c) Placing Poles

When arrangements are completed for placing new poles for additions or reconstruction, the party who is to place the poles shall perform the work as near as practical to the agreed schedule and notify the using party when the poles have been placed.

(d) Placing Anchors

The owner of the pole shall place, at his expense, a standard joint use anchor on either existing or new poles when the anchor is required by both parties.

When an anchor is required for one party only, that party shall place the anchor regardless of ownership of the pole.

ARTICLE 6

REPLACEMENT OF SOLELY OWNED POLE OR ANCHOR FOR JOINT USE

When an existing pole or anchor owned solely by either party requires replacement to permit joint usage, then the owner shall replace the pole or anchor with a pole or anchor of sufficient size and strength to meet the requirements of joint use.

The owner of a solely used existing pole or anchor to be replaced with a joint use pole or anchor shall be reimbursed by the using party for owners remaining value based on owners installed cost in the existing pole or anchor, plus owners cost of removal, less owners salvage. Owners installed cost of anchor to be used in determining remaining value of anchor. Installed pole cost from "Exhibit B or C" to be used in calculating owners remaining value of pole.

When mutually agreed to be desirable to maintain a balance or for other reasons, the party not owning the existing pole being replaced may place the new joint pole or anchor.

ARTICLE 7

EXTRA HEIGHT OR STRENGTH

When extra height or strength is required in new poles or anchors in excess of standard size pole or anchors, it shall be provided in accordance with the following arrangements.

(a) Extra height or strength required by *one* party.

The party who required the extra height or strength shall place the pole or anchor whenever practical.

When the pole or anchor is placed by the party not requiring the extra height or strength, then it shall be reimbursed for the original installation and each subsequent replacement by party requiring the extra height or strength for the difference in cost over the cost of a standard size pole or anchor based upon the Current Agreed Unit Costs as shown on "Exhibit A".

Extra height or strength poles required by one party only are to be counted as standard thirty-five (35) foot poles furnished by the owning party when determining balance of quantities or pole plant furnished annually by each party.

(b) Extra height or strength required by *both* parties or due to governmental authorities or others having jurisdiction.

Each party shall place one-half of the total number of such poles insofar as practical and the party in arrears at the end of each project shall reimburse the other party for the cost of one half of the extra height and strength in the plant not in balance based upon the Current Agreed Unit Costs as shown on "Exhibit A".

Extra height or strength poles required by both parties are to be counted as standard thirty-five (35) foot poles furnished by the owning party when determining balance of pole plant furnished annually by each party.

ARTICLE 8

PLACING, TRANSFERRING, REARRANGING AND REMOVING ATTACHMENTS

(a) Placing attachments

Whenever new poles or anchors are placed as additions or extensions, the owner shall notify the user when the plant has been placed so the user may place its attachments.

(b) Transferring attachments

Each party shall transfer its attachments at its own expense. The owner shall notify the user when poles or anchors are replaced so the user can transfer its attachments.

(c) Rearranging attachments

When an existing pole is to be jointly used, the owner shall rearrange its attachments as necessary to bring them within its own allotted space at its own expense and notify the user when completed.

(d) Removing attachments

(d1) From jointly used poles being removed or abandoned.

The owner and user shall both remove their own attachments at their own expense.

(d2) From jointly used poles being discontinued by user.

The user shall remove its attachments at its own expense.

ARTICLE 9

REPLACE EXISTING JOINTLY USED POLE OR ANCHOR

(a) Due to deterioration

Both parties shall maintain poles and anchors owned by them in a safe and satisfactory manner and shall promptly replace poles or anchors when required due to deterioration or damage.

(b) Due to inadequacy

(b1) For owner's requirements

When an existing joint use pole or anchor is inadequate for additional requirements of the owner, then the owner shall replace the pole or anchor at its own expense.

(b2) For user's requirements

When an existing joint use pole or anchor is inadequate for additional requirements of the user, the owner shall replace the pole or anchor and the user shall pay the owner for value in the existing pole or anchor; plus cost of removal, less salvage. Value shall be based upon Current Agreed Unit Costs less

depreciation with cost of removal and salvage based upon the owner's costs. The Current Agreed Unit Costs to be used are covered by "Exhibit A".

(b3) For requirement of Governmental or other authority.

When an existing jointly used pole is inadequate to meet the additional requirements due to a governmental authority or other authority having jurisdiction, the owner shall replace the pole or anchor at its expense.

(c) Transferring, tree trimming, extra height and strength shall be handled as provided elsewhere in this agreement.

(d) By mutual agreement the user may place the new pole to balance ownership.

ARTICLE 10

RELOCATE EXISTING JOINTLY USED POLE OR ANCHOR

(a) Required by owner or by governmental authority

When necessary to relocate a jointly used pole or anchor due to the requirements of the owner or governmental authority, the owner will relocate the pole or anchor at its expense.

(b) Required by user

When necessary to relocate a jointly used pole or anchor due to the requirements of the user only the owner shall relocate the pole or anchor and the user shall reimburse the owner for cost of relocating the pole or anchor at owner's costs.

Transferring and tree trimming shall be handled as provided elsewhere in this agreement.

ARTICLE 11

DISCONTINUE OR ABANDON JOINTLY USED POLE OR ANCHOR

(a) By using party

When the using party desires to discontinue use of an existing jointly used pole or anchor, it shall notify the owning party, on the form for this purpose, and remove all of its attachments. The using party shall reimburse the owner for value of the difference between a standard joint use pole and a pole of a size to meet the owner's requirements based on Current Agreed Unit Costs, as shown on "Exhibit A", less depreciation.

(b) By owning party

When the owning party desires to discontinue an existing jointly used pole or anchor, it shall notify the using party, on the form for this purpose, that pole or anchor is no longer required by the owner.

If the using party desires to continue to use the pole or anchor, the owner shall abandon the pole or anchor, remove its attachments and the using party shall purchase the pole or anchor and reimburse the owner for value in the pole or anchor based upon a pole or anchor of a size and strength adequate for the requirements of the user only based upon Current Agreed Unit Costs, as shown on "Exhibit A", less depreciation.

When the using party also desires to discontinue use of the pole or anchor, the using party shall remove its attachments and the owner shall remove the pole or anchor at its expense.

If the user fails to remove its attachments within 60 days after receiving notice from the owner, the user shall purchase the pole or anchor. The value is based upon a pole or anchor of a size and strength adequate for the requirements of the user only, based upon Current Agreed Unit Costs, less depreciation. The Current Agreed Unit Costs to be used are covered in "Exhibit A".

ARTICLE 12

TREE TRIMMING

(a) Initial

The initial tree trimming and removal required to establish a new joint use pole line after the balance in Article 26 is reached shall be performed by the owner at no cost to the user, and in a manner to provide adequate clearance for the facilities of both parties.

(a1) Initial tree trimming and removal required to establish a new joint use pole line during the period from the effective date of this agreement and before the balance in Article 26 is reached shall be equitably apportioned between the parties as mutually agreed to in the field by the engineers of the respective parties and based upon the conditions peculiar to the specific situation.

(b) Subsequent

Tree trimming and removal subsequent to the initial requirement shall be at the expense of each party to clear its own facilities.

(c) Due to requirements of both parties or due to governmental authorities or others having jurisdiction.

The cost of tree trimming or removal performed along an existing jointly used pole line due to requirements of governmental authorities or others having jurisdiction or due to requirements of both parties shall be equitably apportioned between the parties as mutually agreed to in the field by the engineers of the respective parties considering the requirements of each party.

ARTICLE 13

BILLING PRICES

The Current Agreed Unit Costs shown on "Exhibit A" are to be based upon Telephone Company costs and such Current Agreed Unit Costs shall be reviewed each two

years and if mutually agreed to be necessary, revised to reflect changes in Telephone Company costs. "Exhibits B and C" shall also be reviewed at each two year intervals and updated if mutually agreed to be necessary.

ARTICLE 14

SPECIFICATIONS

Except as otherwise provided the joint use of the poles covered by this agreement shall at all times be in conformity with the requirements of the Illinois Commerce Commission General Order 160—revised and any subsequent amendments thereof.

ARTICLE 15

MAINTENANCE OF POLES AND ATTACHMENTS

(a) The owner shall, at its own expense, maintain its jointly used poles in a safe and serviceable condition, and in accordance with the requirements of the Illinois Commerce Commission General Order 160—revised and any subsequent amendments thereof and shall replace, subject to the terms of this agreement, such poles as become defective. Except as otherwise provided, each party shall, at its own expense, at all times maintain all of its attachments in accordance with Illinois Commerce Commission General Order 160—revised and any subsequent amendments thereof, and keep them in safe condition and in thorough repair.

(b) Except as required by Illinois Commerce Commission General Order 160—revised and any subsequent amendments thereof, any existing joint use construction of the parties hereto installed prior to the effective date of this agreement, not in accordance with the space requirements as covered herein, may so remain and need not be relocated unless and until opportunity arises to do so by mutual agreement without undue burden and expense, such as where replacements or rearrangements are made for other reasons. The cost of bringing such existing joint

use construction into conformity with said specifications in this manner shall be borne by the parties hereto in the manner provided in this agreement as if this agreement has been in effect at the time the conflict was established.

When such existing joint use construction shall have been brought into conformity with said specifications, it shall at all times thereafter be maintained as provided in this agreement.

ARTICLE 16

RENTALS

Since quantities of pole plant owned by each party are to be balanced annually as provided in this agreement no rental charges will be made by either party to the other party.

ARTICLE 17

PROCEDURE WHEN CHARACTER OF CIRCUITS IS CHANGED

When either party desires to change the character of its circuits on jointly used poles, such party shall give 60 days notice to the other party of such contemplated change and in the event that both parties agree to joint use with such changed circuits, then the joint use of such poles shall be continued with such changes in construction as may be required to meet the requirements of the Illinois Commerce Commission General Order 160—revised and any subsequent amendments thereof, for the character of circuits involved. In the event, however, that both parties fail within 30 days of such notice to agree in writing to such change, then they shall cooperate in accordance with the following plan:

The parties hereto shall determine the most practical and economical methods of effectively providing for separate lines and the party whose circuits are to be moved shall promptly carry out the necessary work.

ARTICLE 18

RIGHT-OF-WAY FOR USER'S ATTACHMENTS

When new pole lines are constructed for joint use, the owning party shall attempt to secure right-of-way for both parties.

No guarantee is given by the owner of permission from property owners, municipalities or others for the use of its poles by the using party, and if objection is made thereto and the using party is unable satisfactorily to adjust the matter within a reasonable time, the owner may at any time upon 30 days notice in writing to the using party, require the using party to remove its attachments from the poles involved and the using party shall, within 30 days after receipt of said notice, remove its attachments from such poles at its sole expense. Should the using party fail to remove its attachments as herein provided, the owner may remove them at the using party's expense without any liability whatever for such removal or the manner of making it, for which expense the using party shall reimburse the owner on demand.

When new pole lines are constructed for joint use, the acquisition of right-of-way shall be pursued as follows:

(a) Right-of-way in city streets, alleys, and public places—terms and conditions of franchise from municipality shall govern.

(b) Platted easements in subdivisions

(1) Existing subdivisions—Grant by subdivider shall govern.

(2) New subdivisions—Each company shall encourage subdividers to use form of grant mutually acceptable to both parties.

(c) All other places—easements shall be acquired by owner on form of easement mutually agreeable to both parties.

(d) Supplemental permits—Railroads and Highways—Space reserved for the other Company shall be shown and identified on drawings submitted to Railroad Companies or District Engineers, but each Company shall negotiate its own agreement for its facilities.

ARTICLE 19

LIABILITY FOR DAMAGES

Whenever any liability is incurred by either or both of the parties for damages arising out of injury to employees or to other persons or to the property of anyone by reason of the joint use of poles and other matters covered by this agreement, such liability shall, as between the parties, be as provided in this Article. As used in this Article, the word "damages" shall include liabilities owed under any workmen's compensation act or other law creating a liability whether or not based on negligence.

Each party shall be liable for all damages caused solely by its negligence or its failure to comply with this agreement and, except where caused by the sole negligence of the other party, for all damages to its employees or its properties.

Except as provided in the next preceding paragraph, each party shall be liable in proportion to its fault where both parties are at fault.

In the event mutual agreement cannot be reached between the parties on proportion of liability then the decision may be reached by other means such as through an Arbitration Board or through recourse of the courts or some other mutually agreeable method.

ARTICLE 20

DEFAULT

If either party shall make default in any of its obligations under this contract and such default continues for a period of 90 days after notice thereof in writing from the

other party, the other party hereunder may forthwith terminate this agreement as far as concerns future granting of joint use.

If either party shall make default in the performance of any work which it is obligated to do under this contract at its sole expense, the other party may elect to do such work, and the party in default shall reimburse the other party for the cost thereof. Failure on the part of the defaulting party to make such payment within 60 days upon presentation of bills therefore shall, at the election of the other party, constitute a default under the first clause of this Article.

ARTICLE 21

RIGHTS OF OTHER PARTIES

Rights or privilege granted by either primary user to a third party prior to execution of this agreement may be continued under the terms and conditions under which granted.

Subsequent to the execution of this agreement the owning party may permit a third party to use its poles under the following terms and conditions.

(a) Rights of the other primary user shall not be infringed upon due to the use of the pole by the third party.

(b) Attachments of a third party shall be treated as attachments belonging to grantor and the obligations and liabilities of grantor shall be the same as if it were the actual owner of the third party attachments.

(c) Owner shall reimburse the other primary user for all costs incurred by the other primary user in providing space required for use of third party.

(d) Owning party may fix and retain all rental on its poles used by a third party.

(e) When either primary user is required by municipal regulations to allow the use of its poles for fire alarms, police or other like signal systems such use shall be permitted to the extent required on the poles owned by either party and the costs incurred by the parties to accommodate such signal systems not paid by the municipality shall be divided equally between the primary users.

(f) All parties other than primary users shall be considered and treated as third parties except for municipal cases outlined in Paragraph (e) above.

(g) When the owning party discontinues or abandons a pole the attachments of both the owning party and the third party shall be subject to removal as provided in Article 11 except when the third party makes satisfactory arrangements with the new owner of the pole for continued use of the pole.

(h) Pole space to be occupied by a third party shall be assigned by the owner of the pole with concurrence of the other primary user. The assignment of such space and usage by a third party is subordinate to the rights and present and future requirements for the space by the other primary user.

(i) When after third party attachments are installed and the space so occupied is required by either of the primary joint users or the third party is required to relocate for other reasons the entire cost of providing other space for the third party shall be the responsibility of the owner.

ARTICLE 22

SERVICE OF NOTICES

Wherever in this agreement notice is provided to be given by either party hereto to the other, such notice shall be in writing and given by letter, mailed, or by personal delivery to the Electric Company at its office at Decatur,

Illinois or to the Telephone Company at its office at Bloomington, Illinois, as the case may be, or to other addresses as either party may, from time to time, designate in writing for the purpose.

ARTICLE 23

TERM OF AGREEMENT

This agreement may be terminated so far as concerns further granting of joint use of poles by either party, by first giving to the other party 90 days written notice; provided that notwithstanding such termination, this agreement shall remain in full force and effect with respect to all poles and anchors jointly used by the parties at the time of such termination.

ARTICLE 24

ASSIGNMENT OF RIGHTS

Neither party shall assign its interest or any part thereof under this agreement except as provided in this Article. Either party may assign its interest under this agreement in connection with the sale, lease or mortgage of substantially all of its property, or in connection with its merger into or consolidation with another corporation, in which event the successor to such party shall succeed to its rights and obligations under this agreement.

ARTICLE 25

WAIVER OF TERMS OR CONDITIONS

The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

ARTICLE 26

EXISTING CONTRACTS

All existing agreements whether verbal or written covering the joint use or joint ownership of poles are by mutual consent, hereby abrogated and annulled and the poles brought under the terms and conditions of this agreement. In the case of jointly owned poles and anchors, an equitable apportionment shall be agreed upon and joint ownership dissolved by the parties hereto with the objective that each party will own 100% interest in an equal quantity of plant constituting these poles and anchors and joint use continued under terms of this agreement. In order to effect a balance in ownership of existing joint use poles the parties hereto agree to purchase or sell solely owned or jointly owned pole plant to effect a balance, based upon estimated installed costs of each party as shown on "Exhibits B and C" of Supplemental Agreement Number One to this General Agreement and said installed costs to be depreciated at a rate shown on "Exhibit H" of Supplemental Agreement Number One, as soon as practical by Telephone Company exchange areas with the objective of effecting a balance in jointly used pole plant existing at the date this agreement is executed within a period of not more than four years.

Normally poles to be transferred by sale under this Article will be in excess of 10 years old.

ARTICLE 27

SUPPLEMENTAL AGREEMENTS

The parties hereto agree that operating routines or working practices to be used in implementing this agreement shall be covered in supplements to this agreement which may be revised periodically as mutually agreed to be necessary but that no terms or conditions of this agreement will be altered in establishment of the working practices in the supplemental agreements. References to exhib-

its in this general agreement refer to those exhibits included in the then current Supplemental Agreement Number One.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate, and their corporate seals to be affixed thereto by their respective officers thereunto duly authorized, in the day and year first above written.

GENERAL TELEPHONE COMPANY OF ILLINOIS

By /s/ (Signature Illegible)
Operating Vice President

Attest
/s/ (Signature Illegible)

Secretary
(Seal)

ILLINOIS POWER COMPANY

By /s/ E. A. Shultz
Vice President

Attest
/s/ L. G. Meek

Secretary
(Seal)

SUPPLEMENTAL AGREEMENT NUMBER ONE TO
GENERAL JOINT USE POLE AGREEMENT BE-
TWEEN GENERAL TELEPHONE COMPANY OF
ILLINOIS AND ILLINOIS POWER COMPANY
DATED FEBRUARY 6, 1967

WHEREAS the parties hereto have entered into a general joint use pole agreement providing for the joint use of poles and:

WHEREAS Article 27 of said general joint use pole agreement provides that operating routines or working practices to be used in implementing the general joint use pole agreement shall be covered by supplemental agreements which may be revised periodically as mutually agreed to be necessary but that no terms or conditions of the general joint use pole agreement will be altered in the establishment of the working practices in the supplemental agreements.

Now, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree each with the other as follows:

FIRST: It is agreed that the CURRENT AGREED UNIT COSTS shown on the attached sheet marked "Exhibit A" shall be and are hereby adopted to be used in billing between the parties whenever billing on the basis of "Current Agreed Unit Costs" is authorized in the general joint use pole agreement except under Article 26.

SECOND: It is agreed that the ESTIMATED INSTALLED COST—ILLINOIS POWER COMPANY as shown on the attached "Exhibit B" shall be used by the Illinois Power Company when billing on the basis of these costs is authorized in the general joint use pole agreement under Article 26 or when owner's costs are applicable.

THIRD: It is agreed that the ESTIMATED INSTALLED COSTS—GENERAL TELEPHONE COMPANY OF ILLINOIS as shown on the attached "Exhibit C" shall be used by the General Tele-

phone Company of Illinois when billing on the basis of these costs is authorized in the general joint use pole agreement under Article 26 or when owner's costs are applicable.

FOURTH: It is agreed that the symbols shown on the attached "Exhibit D" shall be used by both parties in the preparation of the Joint Pole Use Proposal forms "Exhibits E and F".

FIFTH: It is agreed that all proposals for the joint use of poles, replacement or abandonment of poles or other arrangements covered in the general joint use pole agreement shall be submitted on Tentative Joint Use Pole Proposal form "Exhibit E" and Joint Pole Use Proposal form "Exhibit F".

SIXTH: It is agreed that all proposal forms "Exhibits E and F" shall be numbered consecutively by towns and the numbers will be assigned by the Telephone Company and the Telephone Company will add the perpetual inventory data.

SEVENTH: It is agreed that the number of copies of "Exhibits E and F" shall be as follows:

	<i>Electric Company</i>		<i>Telephone Company</i>	
	<u>Signed</u>	<u>Memorandum</u>	<u>Signed</u>	<u>Memorandum</u>
Exhibit E	1	1	1	2
Exhibit F	1	4	1	2

EIGHTH: It is agreed that the standard right of way easement forms of the respective parties shall be used in securing right of way grants as provided in the general joint pole use agreement.

NINTH: It is agreed that the depreciation calculation used to determine remaining value in transactions under the general joint pole use agreement except under Article 26 will be as shown by "Exhibit G".

TENTH: It is agreed that the depreciation calculation used to determine remaining value in transactions under Article 26 will be as shown on "Exhibit H".

ELEVENTH: This supplemental agreement shall be effective on March 1, 1967 and remain in full force and effect until superseded by a later supplement or until cancelled by mutual agreement of the parties hereto.

Executed in accordance with the provisions of Article 27 of the general joint pole use agreement dated February 6, 1967 between the parties hereto for their respective companies by

GENERAL TELEPHONE COMPANY OF ILLINOIS

By: /s/ (Signature Illegible)
Operating Vice President

Attest
/s/ (Signature Illegible)

Secretary

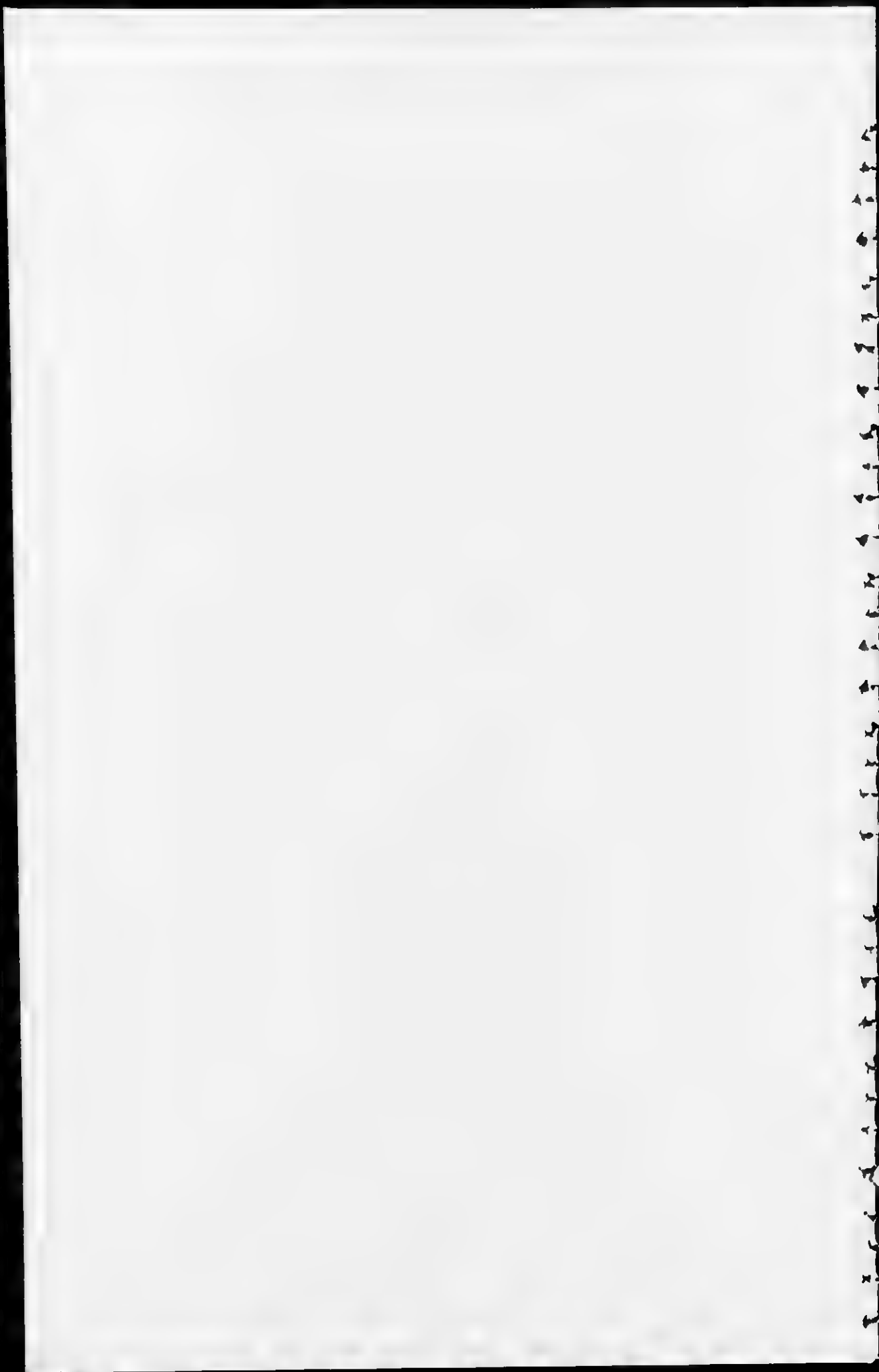
(Seal)

Attest
/s/ L. G. Meek

(Seal)

ILLINOIS POWER COMPANY

By /s/ E. A. Shultz
Vice President



Date July 14, 1966

Exhibit A

CURRENT AGREED UNIT COSTS

(Unit Costs of Plant for Use in General Joint Pole Use Agreement
General Telephone Company of Illinois and Illinois
Power Company Based Upon Telephone Company Costs)

A. Full Unit Costs for New Poles in Place

Class of Pole	Length of Pole						
	25'	30'	35'	40'	45'	50'	55'
1H	\$ -	\$112.00	\$137.00	\$158.00	\$191.00	\$241.00	\$ -
1	-	91.00	119.00	142.00	178.00	202.00	252.00
2	-	83.00	106.00	135.00	163.00	195.00	233.00
3	-	75.00	97.00	122.00	148.00	177.00	211.00
4	52.00	66.00	90.00	111.00	136.00	-	-
5	47.00	61.00	83.00	99.00	124.00	-	-
6	44.00	55.00	74.00	-	-	-	-
7	40.00	50.00	70.00	-	-	-	-
8	37.00	46.00	-	-	-	-	-

B. Full Unit Costs for Miscellaneous Work Operations on Poles

Length and Class of Pole	Removal of Poles	Move Pole By Trenching	Pull and Reset Pole	Straighten Standing Pole
25' All Classes	\$ 7.00	\$14.00	\$20.00	\$ 5.00
30'	10.00	16.00	26.00	6.00
35'	13.00	18.00	35.00	8.00
40'	17.00	21.00	40.00	9.00
45'	23.00	24.00	49.00	11.00
50'	29.00	28.00	54.00	14.00
55'	34.00	31.00	60.00	18.00

C. Full Unit Costs of Other Miscellaneous Work Operations

Item	Unit Cost
Pole Extension 5'-6"	\$24.00
Pole Extension 10'-0"	34.00
Self-Sustaining, Concrete (SSC)	53.00
Top key - single plank - new or standing pole (SP)	17.00
Pole Guard 14" x 13" x 1/8" (use 1, 2 or 3 as required)	7.00
10-12M Anchor with Twin-Eye Rod	28.00
16M Anchor with Twin-Eye Rod	43.00
Swamp Screw Anchor	40.00
Rock Anchor	42.00

NOTE:

These costs are used in purchasing poles to reach annual balance per Article 5 (c) and for extra height or strength payments per Article 7 (a) and (b) and Article 11 (a) and (b).

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ESTIMATED INSTALLED COST OF WOOD POLES
IN ILLINOIS POWER COMPANY DISTRIBUTION SYSTEM
FOR YEARS 1925 THROUGH 1965

FIGURES REPRESENT COST OF POLE WITHOUT ATTACHMENTS

Year Installed	Pole Size and Class								
	30'5	35'5	40'5	45'5	50'5	55'3	60'3	65'3	70'3
1925-1929	\$19	\$22	\$24	\$ 28	\$ 33	\$ 47	\$ 63	\$ 85	\$ 95
1930-1934	19	22	25	29	33	47	62	83	97
1935	18	21	24	27	32	45	60	81	90
1936	19	22	24	28	33	47	64	86	96
1937	20	23	26	30	36	51	68	92	102
1938	21	24	27	32	37	53	72	97	108
1939	21	24	27	32	37	53	72	97	108
1940	21	24	27	32	37	53	72	97	108
1941	22	25	28	33	39	56	76	103	115
1942	23	26	30	35	41	60	77	109	122
1943	23	27	31	36	42	62	83	113	126
1944	24	28	32	37	44	64	88	120	135
1945	25	29	34	39	46	68	93	128	142
1946	27	32	36	41	49	72	99	134	150
1947	30	36	41	47	56	84	115	158	176
1948	33	39	45	52	62	92	128	175	194
1949	35	41	47	54	65	97	133	182	204
1950	37	43	49	56	67	100	137	187	208
1951	38	45	52	60	71	106	146	200	221
1952	40	47	54	62	73	110	151	208	231
1953	41	49	56	64	77	115	160	218	242
1954	44	51	59	68	81	121	167	229	254
1955	45	53	60	70	83	124	170	234	259
1956	48	56	64	74	88	132	182	247	277
1957	50	58	67	78	92	139	192	263	292
1958	52	61	70	81	96	144	198	272	302
1959	54	63	72	83	99	147	203	278	303
1960	55	65	74	85	101	150	203	282	319
1961	57	67	77	88	105	156	214	291	329
1962	60	70	80	92	109	161	221	301	339
1963	61	72	82	94	112	165	226	307	345
1964	64	74	85	93	116	170	233	316	347
1965	65	76	87	100	118	174	238	324	362
Jan 1966	66	77	88	101	120	177	243	331	367

NOTE:

These costs are for use under Article 26 of General Joint Use Pole Agreement.

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ESTIMATED INSTALLED COST OF POLES
OF GENERAL TELEPHONE COMPANY OF ILLINOIS

FIGURES REPRESENT COST OF POLE WITHOUT ATTACHMENTS

Year Placed	Pole Size and Class					
	25'	30'	35'	40'	45'	55'
Prior to						
1936	5.11	8.09	13.49	20.27	26.58	33.40
1936	5.32	8.33	13.84	20.22	26.76	33.43
1937	6.33	10.00	16.16	23.23	27.87	37.22
1938	6.61	10.44	16.80	24.14	31.08	38.24
1939	6.58	10.38	16.73	23.91	30.97	38.11
1940	6.74	10.62	17.01	24.41	31.41	38.62
1941	7.77	12.26	19.33	27.48	34.84	42.41
1942	8.39	13.27	20.73	29.38	36.94	44.69
1943	9.23	14.59	22.66	31.94	39.59	47.73
1944	10.49	16.53	25.35	35.65	43.68	52.29
1945	12.00	18.85	29.74	40.09	48.66	57.73
1946	12.38	19.47	29.63	41.13	49.88	59.13
1947	16.48	25.76	38.55	53.05	63.26	73.94
1948	18.38	28.65	42.74	58.72	69.34	80.78
1949	18.54	28.88	43.08	59.12	69.89	81.41
1950	19.49	30.32	45.16	61.92	72.99	84.83
1951	21.48	33.34	49.52	67.59	79.40	91.92
1952	22.82	35.36	52.40	71.61	83.72	96.73
1953	24.67	38.12	56.46	76.81	89.58	103.31
1954	25.20	38.98	57.70	78.65	91.46	105.34
1955	25.72	39.72	58.73	79.98	93.01	107.11
1956	28.26	43.56	64.28	87.22	101.30	116.23
1957	30.15	46.45	68.35	92.62	107.38	123.06
1958	30.43	46.86	69.03	93.68	108.34	124.08
1959	31.14	47.90	70.50	95.47	110.59	126.61
1960	32.62	48.25	72.58	96.05	112.82	130.67
1961	34.10	48.60	74.66	96.63	115.05	134.73
1962	35.58	48.95	76.74	97.21	117.28	138.79
1963	37.06	49.30	78.82	97.79	119.51	142.85
1964	38.54	49.65	80.90	98.37	121.74	146.91
1965	40.00	50.00	83.00	99.00	124.00	151.00

NOTE:

These costs are for use in transactions under Article 26 of General Joint Pole Use Agreement.

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General Telephone Co. of Illinois
and Illinois Power Company

Exhibit D
Revised 8-1-67

- CODE EXPLANATION -

- Existing Telephone Company pole, Power Company has no attachments.
- _R Existing Telephone Company pole, Power Company to use.
- Proposed Telephone Company pole, Power Company to have no attachments.
- _R Proposed Telephone Company pole, Power Company to use.
- + Existing Power Company pole, Telephone Company has no attachments.
- +_R Existing Power Company pole, Telephone Company to use.
- +₊ Proposed Power Company pole, Telephone Company to have no attachments.
- +₊_R Proposed Power Company pole, Telephone Company to use.
- _E Existing Telephone Company pole, Power Company now using.
- ⊙_E Existing Telephone Company pole, Power Company to remove contacts.
- +_E Existing Power Company pole, Telephone Company now using.
- ⊕_E Existing Power Company pole, Telephone Company to remove contacts.
- EHCO Indicates that the extra height and/or class is required by the owner.
- EHCL Indicates that the extra height and/or class is required by the user.
- EHCB Indicates that the extra height and/or class is required by both.
- ✕ Existing Telephone Company anchor Power Company to use.
- | Existing Power Company anchor Telephone Company to use.
- ✕ Proposed Telephone Company anchor Power Company to use.
- | Proposed Power Company anchor Telephone Company to use.

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**GENERAL TELEPHONE COMPANY
OF ILLINOIS**

TENTATIVE JOINT AND JOINT USE POLE PROPOSAL

EXHIBIT NO. 28

TOWNSHIP	MUNICIPALITY	WSEC	DATE
TECH.	DIST.	P. I. NO.	LOC.
FILE REC.	SCHOOL	EL. CO. REC. NO.	ORDER NO.
SHEET NO.	DIST. NO.		DIV.
FIELD	WORK	N.O. NO.	AGR. NO.
ENG.	ORDER NO.		

REASON FOR WORK. INDICATE ON SKETCH WHICH COMPANY IS TO PERFORM WORK AND AT WHOSE EXPENSE.

PRIMARY VOLTAGE				UNDERGROUND PLANT	
WYE	<input type="checkbox"/>	DELTA	<input type="checkbox"/>	ELCO CO.	Q. T. CO.
MULT GRD	<input type="checkbox"/>	UNI. GRD	<input type="checkbox"/>	YES	NO

PROPOSED BY:

RECOMMENDED FOR ACCEPTANCE
REJECTION

G. T. CO. FIELD ENGINEER

DATE SERVICE DESIRED

APPROVED BY

DATE

EL. CO. ACCEPTED
REJECTED BY

DATE

ELECTRIC CO. ESSA

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EXHIBIT B

GENERAL TELEPHONE COMPANY
OF ILLINOIS
JOINT POLE USE PROPOSAL

EXHIBIT F

24

PROPOSAL NO. _____

MUNICIPALITY _____

PLAT
DWG. NO. _____

DATE _____

BY _____

COUNTY _____

1/4 SEC. _____

TWP. _____

RANGE _____

ORDER NO. _____

RECORD
DWG. NO. _____

DIST. MAP NO. _____

RECOMMENDED _____

DIV. ENGR. _____

APPROVED _____

ENGINEER _____

THIS PROPOSAL CANCELS PROPOSAL _____

DATE _____

REASON FOR ATTACHMENT:

SKETCH

The parties hereto agree that the above described property is hereby brought under and shall be subject to all of the terms and provisions of the agreement dated _____ between the parties hereto, covering joint use of poles; and further agree to pay the net amount of bill shown on the reverse side hereof.

ACCEPTED _____

DATE _____

ACCEPTED _____

DATE _____

GENERAL TELEPHONE COMPANY
OF ILLINOIS

ILLINOIS POWER COMPANY

[illegible][illegible]

SUPPLEMENTAL AGREEMENT NUMBER ONE
TO GENERAL JOINT USE POLE AGREEMENT
BETWEEN GENERAL TELEPHONE COMPANY
OF ILLINOIS AND ILLINOIS POWER COMPANY

It is agreed that the following depreciation rates shall be used in determining remaining value of plant in transactions under the General Joint Use Pole Agreement except under Article 26.

<u>Age in Years</u>	<u>Percent Depreciated</u>
0	0
1	4.70
2	9.30
3	13.78
4	18.26
5	22.62
6	26.99
7	31.02
8	34.94
9	38.64
10	42.22
11	45.47
12	48.72
13	51.63
14	54.54
15	57.23
16	59.70
17	62.16
18	64.51
19	66.64
20	68.77
21	70.78
22	72.69
23	74.48
24	76.27
25	77.95
26	79.52
27	80.98
28	82.43
29	83.89
30	85.12
31	86.35
32	87.58
33	88.70
34	89.82
35	90.83
36	91.84
37	92.85
38	93.74
39	94.53
40	95.42
41	96.21
42	96.99
43	97.78
44	98.56
45	99.23
46	99.90

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from the original bound volume

Excerpts from General Exhibit 38

[24] Q. You interviewed them separately, I believe? A. That's right, we did.

Q. And what— A. And two of the reasons for the interview, the one reason for the interview initially was the fact of long distance signals and whether or not you had to have FCC approval prior to starting construction. And, again, from memory, GT&E stated that they would go ahead without FCC approval. I don't mean that they would flaunt the FCC, but they felt that they could go ahead without securing approval.

TeleCable was not as responsive to that question. Somewhere about this period of time the rule "214" came to light, and I can't tell from memory at this point whether this was just before or just after this hearing.

Q. Maybe I can refresh your recollection. On June 26th, 1968 the Federal Communications [25] Commission released a decision in its Docket No. 17333, which in effect held that before a telephone company could construct facilities which would be used to provide channel service to a CATV system it would have to obtain certificates under Chapter 214 of the Act. And I believe that the meeting which your committee had with GT&E Communications, Inc. was on July 29th, 1968, more than a month after the FCC's decision.

It was true, was it not, Mr. Fleming, that the reason that a question arose was that GT&E Communications, Inc. did propose to take channel service from General Telephone Company of Illinois and thus under the terms of FCC's decision, General Telephone Company of Illinois, at least, would be required to get a Section 214 certificate? A. I believe that's right. However, at the time of the hearing I don't think anybody was quite sure of the interpretation, [26] at the time of the interview, I should say, rather than the hearing.

Q. At that interview did not GT&E Communications, Inc. indicate that if delays should be encountered by the

Telephone Company in getting Section 214 clearance, that it would construct its own system?

Mr. Ricks: I think we should allow Mr. Fleming to refresh his memory with the memorandum of August 2, 1968 before he answers that question.

Mr. Lloyd: I am conducting the examination. If you want to refresh his recollection, you can examine.

Mr. Ricks: You do it with a lecture and I would like to have him refresh his memory with a contemporary document.

Mr. Lloyd: Q. Would you like to look at the report of August 2nd, 1968?

A. What report do you have reference to?

(Whereupon Mr. Ricks hands document to Counsel.)

* * * * *

[56] Q. There was after the public hearing of the joint Councils, the Councils went into a private session, did they not? A. They excluded the press, if that's what you mean, and the applicants too, I guess. Yes, they did.

Q. Did you say at that meeting, or did someone else say at that meeting something to the effect, "Let's face it, G-Tec has a built in advantage"? A. I did not say that; that statement was made.

Q. What was the advantage that they alluded to? A. I think that would be speculation on my part.

Q. Do you recall who said that, who made the statement? A. I think I do but without hearing the tape I wouldn't be positive.

[57] Q. Would you tell me who you believe it was? A. I believe it was one of the members of the Normal City Council. Do you want the name?

Q. Yes. A. From memory, I think it was Mr. Schroeder, but I'm not—I'm just going from memory now. This was a heated discussion at this point, half because the press was pounding on the door, somebody thought they were listening, they opened the door, one member of the press fell in. They asked him to move on out. And everybody

had about enough of the CATV to the point where they wanted to get it to a conclusion, I think.

Q. Would you say that a prime consideration in the discussion of the Council members was choosing the company that could provide service the quickest? A. Well, assuming that all applicants would meet the same requirements, there is [58] no question but what they wanted this service now and not later.

Q. Was any discussion given to an advantage that G-Tec might have in the quickness that it could provide the service? A. Oh, I think there was without any doubt some discussion regarding the fact that G-Tec had a relationship with General Tel, to the layman at least, that appeared to be its advantage, but that was recognized.

Q. For my information, who is Mr. Nafsziger of GTI? A. He was general counsel and member of the Board, I believe, of General Telephone of Illinois.

Q. I just wanted to know. A. He was an attorney that represented General Tel in numerous instances in the past that I have been involved in.

Q. At the meeting of August—was the 15th the joint meeting of Councils? A. I think so.

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Excerpts from General Exhibit 42

[83] pole line attachment agreements, or construction of your own system, or channel service offering? A. Yes, I would say that at that time our local concept of the thing was that we would construct our own system and secure pole line attachments, which were the usual thing in Illinois and other cities, and we assumed it would be forthcoming here.

Q. Did you discuss the main advantages or disadvantages of each of the alternatives that I mentioned to you? A. What were the other alternatives?

Q. A pole line attachment agreement whereby you would rent space on the telephone company's poles. A. Yes.

Q. The construction of your own system whereby you will erect your own poles and then place cable facilities?

A. No, at no time did we seriously consider the idea of our own poles because [84] we felt that just—the public reaction to this would make it impossible. Our own reaction would be that it would be so esthetically unpopular that we wouldn't want to do it, and the Council wouldn't want us to do it, and the people of Bloomington wouldn't want it.

Q. In '64 were you aware that the Telephone Company was providing a channel service offering? A. In '64?

Q. Yes. A. You mean the General Telephone Company of Illinois?

Q. The General Telephone Company of Illinois. A. No, I not only was aware of it—are you sure they were?

Q. You have to ask Counsel for that. A. I didn't know.

Q. You didn't inquire into the Telephone Company?

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[110] whether a license or franchise was required? A. Now your question is, "Had we discussed with the Bloomington Council the question of a franchise prior to February 9th, 1966?" My recollection would be, yes, that we started talking, inquiring of the Council in '65.

Q. I'm not talking about a CATV to operate a system, I'm asking you, did you inquire of any city officials as to whether they would be predisposed to awarding such a license or franchise regarding the construction or erection of poles or whether you inquired of those officials whether such a license or franchise was needed? A. Do you mean to construct new poles for a system?

Q. Yes, sir. A. Well, I never discussed that point with them; possibly Mr. Ives did. I just can't answer it.

Q. If you did not, sir, what is the [111] basis for your statement "that since neither Council is likely to grant another franchise involving the granting of new poles"? A. It seems to me obvious that—I couldn't imagine a City Council of either city already overrun with poles, one-

story houses and these tremendous television aerals on top of them, and no trees, we'd lose all of our trees, and with the poles and wires, I couldn't conceive either Council allowing CATV coming in and putting in their own poles.

Q. Again, this is just your opinion? A. Yes, just my opinion.

Q. Prior to February 9th, 1966, did Full Vision ever negotiate with Illinois Power Company for pole line attachment agreement?

Mr. Ricks: I think he answered that question.

Mr. Wholl: He said he had some * * *

[115] Q. Let me ask you an obvious question: if awarded the franchise, how did you intend to provide CATV service? A. Well, we intended on getting a pole attachment with—the reason that we didn't meet that part of the bid form was that we were told that we couldn't make a pole attachment agreement, but that the Ordinance required that we do, so we went ahead and applied and said, "Yes, we will meet that part if we can get a pole attachment agreement from the telephone company." I think the ordinance provided that you had to have pole attachment agreements within 30 days.

Q. But I take it that through your negotiations with GTI, that they had refused to enter into a pole attachment agreement with you? A. You see, this is the thing: they [116] never flatly refused, they dangled around about it, they never even in this February 9th meeting in '66, no, not that one, the one Mr. Rowland—

Mr. Lloyd: May 10th.

A. No—yes, May 10th of '68. Even at that time Mr. Rowland wouldn't say flatly that he wouldn't give us a pole attachment agreement any more than his man Malone would say flatly the night of the hearing of the Normal Council that he wouldn't give it. He said he wouldn't answer pro or con sort of thing.

Q. So at the time that you submitted your franchise you

still believed that you would be able to negotiate a full pole line agreement? A. I would substitute the word "hoped" for believed, hoped that we might.

Q. Did you condition your franchise application on negotiating a pole line attachment agreement?

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Excerpts from General Exhibit 43

[28] A. I think the parties on the other end were the two city managers of the two cities, the two city attorneys, and a representative of the Bernard Company, the consulting firm who primarily had some questions about our bid. One of the prime areas they were investigating was to find out why we included this statement that we conditioned our bid on ability to negotiate the pole agreements and I explained this to them.

Q. You say in effect the substance of your explanation was just what you have recited? A. Yes. Mr. McAllister, I believe, asked me were we not aware that the city would possibly permit us to set poles and I told him no, that our interpretation based on my visit there with Mr. Flemming prior to the bid situation, was that it was the type of city to discourage this type of construction, and this was one of the reasons with a subsidiary of General bidding, we felt we had to with the large bonds and tight construction schedules condition our bid in this fashion.

Now, he then asked me or questioned me about the fact that if we were allowed by the cities to set our own poles to complete this construction, would this in any way hinder us and would we be able to meet the construction deadlines. I told him that if the cities agreed to let us do [29] this, let us set our own poles, we would have no problems meeting the construction deadlines as specified in the ordinance.

Q. Is that one of the reasons for your subsequent telegram? A. Yes, this particular telephone call and a subsequent telephone call by Mr. McAllister relating to me the committee's recommendation to the city council.

Q. Now, what portions of the ordinance specifically—you may refer to the ordinance—led you to believe that the negotiations for pole attachment agreements could create severe problems for you, if you thought so? A. Sections 3(a) and 4(j).

Q. Would you summarize those for us? A. Yes. 3(a) appears to specifically provide for the use of lease-back facilities in the system, and 4(j) is the clause that discourages additional construction of utility poles in the city.

Q. What is the performance requirement? What provision is that? A. I believe that it is 7(d). Generally speaking the whole Section 7 has to do with the various time performance provisions.

Mr. Ricks: We will have those copied in the record * * *

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Excerpts from General Exhibit 54

agreement with business information supplier Dun & Bradstreet, Inc. Business life being what it is, moreover, some new contender may yet wrest away the lead in this new multibillion-dollar market, just as IBM snatched the initiative in the computer business away from Remington Rand.

Some basic questions

Facing this array of well-heeled giants, Warner obviously has his work cut out for him. For some basic questions remain to be answered before the information utility can be fully developed. What kinds of circuits will be needed to carry the communications loads of the future—existing telephone lines, more versatile coaxial cable, globe-spanning microwave or some combination of the three? Will the information utility be regulated? Who will supply the equipment to link tomorrow's computers with whatever circuits carry their messages?

Meanwhile, GT&E is moving toward total communications simply by carrying on its day-to-day operations. In the first place, it is expanding what must be the heart of any

public communications complex: its telephone network. To this end, it continues to make acquisitions. But the process is a highly selective one, because GT&E balks at paying the high multiples that seem to be the order of the day for such runner-up independents as United Utilities and Continental Telephone Corp. Actually, Power and his colleagues got a jump of nearly a decade on the competition by building up years ago on unassailed lead in independent telephone franchises.

Not that it has stopped making big purchases. Far from it. In 1964 the company plunked down \$326 million for Western Utilities—a move that touched off an antitrust suit against GT&E, which was dropped a year later. Then it picked up Hawaiian Telephone for about \$300 million—twice as big an acquisition. Leslie Warner notes, as any made by that celebrated conglomerate, Textron, on whose board he happens to sit, GT&E is now looking with interest at Western Power & Gas, whose 700,000 phones make it the fourth largest U.S. independent.

But General Tel characteristically insists that it will not make a purchase just to add phones. It looks at other vital criteria too. The ideal acquisition, says finance chief John J. Douglas, is in a growing area of the country and close enough to an existing GT&E company to share its management. Ideally, it should cause no more dilution of earnings than can be overcome in five years.

However, concentrated as it is in burgeoning rural and suburban areas, the company also adds telephones from within—almost \$500,000 last year. By steadily upgrading its services, it keeps its revenue curve climbing even more steeply. Direct distance dialing, for example, an obvious spur to long-distance calling, now is available to about two out of every three GT&E phones (compared with three in ten five years ago).

Besides expanding its physical network, General is moving in several other ways to step up its communications efficiency. Like AT&T, it has been developing an electronic

switching system. This advance may mean little to the layman, but Herbert F. Lello, GT&E's manufacturing chief, compares it in importance to the advent of the dial phone. It can handle about six times as much traffic as the electro-mechanical units now in use, in about half the space. Obviously, as the tide of data communications keeps rising, electronic switching is likely to outmode the older, slower equipment.

Other GT&E people are hard at work improving the terminal equipment that the company's customers will be using in years to come. More sophisticated push-button phones and faster print-out devices, for example, eventually will be hooked into the all-communications complex. "We are considerably in advance of the actual demand," declares Robert J. Gressens, president of Automatic Electric Co., GT&E's telephone manufacturing arm, because we have for many years felt that data was virtually going to explode."

When the explosion occurs, it goes without saying, General Tel plans to be ready. Meanwhile, beyond the ever-more-versatile telephone, such GT&E subsidiaries as Lenkurt Electric and Sylvania Electric Products keep coming up with still more sophisticated communications devices. Lenkurt, for example, is a leading supplier of the microwave equipment that transmits internal messages for such customers as the railroads and power companies.

In the homes of America, too, GT&E has a foot in the door. In 1965 it set up a subsidiary to consolidate the community antenna TV franchises that it inherited from some of its newer phone company acquisitions and to seek new ones. The unit now has 37 CATV franchises dotting the nation from Georgia to Washington.

Providing the U.S. public with improved television reception may stretch the usual definition of communications a little. But here again GT&E is thinking ahead. It is no secret that its top management, like other CATV holders, hopes eventually to hook a lot more than a community antenna to the ends of the heavy-duty coaxial cable. It might

some day, for example, transmit stock quotations, meter readings or a message from a working wife that would turn the oven on.

While fully aware of the huge investment involved and the inevitability of loss operations at the start, General Tel considers CATV one of the bright hopes of the years to come. And here again Warner stakes out a claim: "We feel that whatever type of services will someday be provided by a coaxial cable networks ought to be provided by us."

GT&E International, for its part, is reaching out even further into the broad and still largely unexplored realm of satellite communications. This is, of course, a field that excites fantasies even in the mind of the most nontechnical layman. It is hardly surprising, then, that GT&E is launching a bid here. While the company holds less than 1% of the outstanding shares of Communications Satellite Corp. (AT&T has 29%), it is getting set for the day when the skies may be full of globes originating and relaying messages to the four corners of the world. General Tel has built ground stations for satellite signal transmission and reception in Australia and Italy and has contracts for others in Chile, the Philippines and Thailand.

Adding the "E"

On the manufacturing side, General Tel, of course, rests heavily on Sylvania. With its acquisition back in 1959, GT added the "E" and took a long stride toward its avowed corporate objective of balancing net from regulated sources with income from the nonregulated.

But there were other motivations as well. Specifically, Sylvania gave the parent company the electronics capability that it needed—and needs more now to equip it for the intensifying battle of technology. To, it added 2,500 research personnel (General then could muster but 200) and brought in another asset of incalculable potential: defense contracts.

Sylvania today is a much bigger factor than it was then. Over the past six years it has doubled its sales, a rate of

growth surpassing that of such rivals as Radio Corp. of America and General Electric. Today lighting is its work-horse, * * *

Excerpts from Common Carrier Exhibit 1

[3] Thereupon,

James J. Clerkin, Jr.,

a witness, was called for examination by counsel on behalf of the Petitioner, and after having been duly sworn by the Notary Public, was examined and testified as follows:

Direct Examination

By Mr. Ricks:

Q. Mr. Clerkin, would you state your full name for the record? A. James J. Clerkin, Jr.

Q. Would you state your current positions with General Telephone? A. Executive Vice-President, Telephone Operations, General Telephone & Electronics Corporation.

Q. Do you hold any other offices with General companies? A. Yes. I am also Executive Vice-President, Telephone Operations of General Telephone Service Corporation. I am the President of General Telephone & Electronics Communications, Inc.

Mr. Lloyd: That's GT&E Communications.

The Witness: GT&E, is it? I stand corrected.

Mr. Lloyd: You can call it G-Tec.

The Witness: G-Tec, all right. And I guess I have [4] some miscellaneous vice-presidencies, and I am sorry but I can't quote them.

[5] Q. You were aware, I assume, that General telephone companies were executing pole-attachment agreements with CATV systems in various areas where the telephone companies were operating? A. Yes. I was aware that we had some pole-attachment agreements with CATV companies.

Q. You also were aware, I assume, that apparently at

least two General telephone companies in 1965 or prior to 1965 had tariff offerings for General services for CATV systems, is that correct? A. Some companies had tariffs. I can't be specific and state whether it was two, four, or three. I don't know.

Q. Did the Service Corporation undertake to coordinate and to promote a uniform policy among General Systems regarding CATV? A. Well, the Service Corporation in its coordinating role certainly had CATV activity under study, and made recommendations to the telephone companies from time to time as to tariff activities or pole-attachment contracts.

Q. I have a series of documents, Mr. Clerkin, which I will pass you from time to time, and before I pass them to you [6] I will give your attorney a chance to review them. Some bear your signature; others bear signatures of other people in the General System.

The first is a directive to all telephone operating company presidents, dated February 25th, 1965. "Subject: Community Antenna Television Service." A. Yes.

Q. Now, the policy stated or the purpose of that document, I assume, was to communicate to the operating companies the recommended policy of the General System regarding CATV as of that date, is that correct? A. Yes.

Q. And am I correct in assuming that your purpose here is to encourage the offering of the General service for CATV rather than the leasing of pole space to CATV systems? A. That is correct.

Mr. Lloyd: Jay, I realize you have a great deal of latitude in the form of questions, but I do think it would be more beneficial for the record to ask questions. There are some bounds as to how far you can go in leading him along in testifying.

Mr. Ricks: What I am really attempting to do—

Mr. Lloyd: I have voiced my objection.

[7] Mr. Ricks: The notice of deposition, the document is relatively clear, and I don't think I have mischaracterized it.

By Mr. Ricks:

Q. Now, Mr. Clerkin,—

Mr. Lloyd: Excuse me, Jay. I would suggest then if it is clear, you let it speak for itself.

Mr. Ricks: Well, I wanted to authenticate it to Mr. Clerkin.

By Mr. Ricks:

Q. I would like to hand you now an organization announcement, dated May 10th, 1965, of the GT&E Service Corporation, and this, I assume, is an announcement that G-Tec has been created for the purpose of engaging in the operation of CATV. The CATV business among other things. A. That is correct.

Q. Now, I would like for you to review another directive from GT&E Service Corporation to operating company presidents; "Subject: Marketing CATV;" dated May 18th, 1965. And I ask you if you recollect, Mr. Clerkin, whether the CATV Marketing Guide that is noted in this directive was prepared to assist operating companies in marketing the General service for CATV? A. Well, I don't exactly recall this document. It's a carbon copy obviously, but I would think from reading this that [8] the Marketing Guide was put out to assist the operating companies in their endeavor to market General service.

Q. Do you recall, Mr. Clerkin, whether as of 1965 the General Systems had been relatively successful or unsuccessful in marketing a channel service offering to CATV systems within their operating areas?

Mr. Lloyd: You mean the operating companies in the General System?

Mr. Ricks: Yes.

Mr. Lloyd: The General System. You referred to the General Systems.

Mr. Ricks: Yes.

The Witness: Until some time late in 1964 or 1965 the General companies had a posture of offering pole attachments, and when I assumed the post of Operating Vice-President we reassessed this, and we came to a determi-

nation that we should consider this facility a communication facility to be tarified and offered by the telephone companies to the CATV operators. We did not feel that we were necessarily in the business of renting pole space. This activity—and you dated it early in '65—about that time, I think this policy was evolving. And you say were we successful. I would have to say that we were just launching this activity or this change in policy from [9] the point of view of the telephone subsidiaries of General.

Did we sell any or how many? I don't know.

By Mr. Ricks:

Q. Your hope was, of course, to be successful in this?

A. Yes.

Q. Now, do you also recall, Mr. Clerkin, that in connection with the creation of G-Tec you encouraged the operating telephone companies to keep in close contact with G-Tec regarding any CATV activities which they might learn of in their areas of operation? A. I don't know if I can agree totally with the word "encourage." Certainly there was liaison between the staff people in G-Tec and the telephone operating companies, a flow of information as to activities taking place in their locales relative to CATV activities. I think I would state that this was a two-way dialogue, because the policy of the telephone operating companies was such that they wanted to offer the channel services. G-Tec was formed to go into the CATV business within our own territories and outside of our own territories.

Q. Did—

Mr. Lloyd: Had you finished your answer, Mr. Clerkin?

The Witness: Yes.

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[12] A. I was obviously aware of this document.

Mr. Ricks: I apologize. I did not tie the two together.

By Mr. Ricks:

Q. At this point in time, let's say May of 1965, the summer of 1965, Mr. Clerkin, was the Service Corporation

recommending a policy that the operating companies should take with regard to the lease of pole space by the General Telephone companies to prospective CATV operators? A. Yes. I think the Service Corp. was recommending the offering of this service under tariffs, that this was the preferred way to offer this service. We saw this facility as part of our charter communications facility. About this time the industry was seeing other alternate uses of this facility, and it seemed a logical offering on the part of the common carrier under a tariff as opposed to a pole contract.

Q. Was consideration ever given to the rendering of a CATV service by General Telephone operating companies rather than a sister company such as G-Tec? A. Yes. We very definitely considered having the telephone companies themselves engage in CATV activities directly or even in the form of a wholly-owned subsidiary of theirs in their respective jurisdictions. We chose not to go [13] that route in the form of G-Tec because the regulatory climate was so confused and so unstable then, that we could not make finite decisions and determinations as to what was going to be regulated, was it going to be treated as a common carrier offering, or was it something separate, unique unto itself as a CATV activity. This was the reason that we organized the CATV company until some clarification appeared on the horizon which would make a more finite decision as to whether this should be another service offering of the telephone company.

Q. I am going to pass you now, Mr. Clerkin, a directive to All General Operating Company Presidents, bearing your signature, and although it is dated January 3d, 1965, we are in relative agreement that it is '66.

Mr. Lloyd: You might ask Mr. Clerkin if he recalls this.

By Mr. Ricks:

Q. Do you recall, Mr. Clerkin, that? A. (Nodding head affirmatively).

I would assume that this is January of '66, not '65.

This was a recommended policy to the telephone op-

erating companies that evolved out of a series of studies and discussions with my company, looking at the CATV development at this time, and this was our recommended policy on it.

[14] I can't agree with your word "directive" as such. Again, we recommend these to our telephone subsidiaries, and they have to then determine their local conditions, and does it fit, can they follow it, to what degree, to what extent. But this was a recommended CATV distribution policy as it's labelled.

Q. Your correction of my characterization prompts me to ask to what extent either the Service Corporation or the parent could direct an operating wholly-owned or controlled telephone company in the event the telephone company refused to follow a recommendation such as this? A. Well, the Service Corp. is also a wholly-owned subsidiary. The parent that exercises these staff activities or procedures, policies, practices, I would suppose that the parent owning a hundred per cent of the company, if some very untoward event was taking place, it was extremely critical, we would have to exercise our voting control to change the operation of the company. This would have to be pretty drastic action. Frankly I have never sat down and contemplated this one set of circumstances, because this kind of precipitous action—

Q. But it is true, is it not, Mr. Clerkin, that if as you say a subsidiary company of GT&E were to take action detrimental in the judgment of GT&E to the General System, there [15] is no doubt that GT&E could change that policy simply by exercising its voting control of a hundred per cent, or I believe in the case of GTI, ninety-one per cent of the voting stock of the company? A. Well, certainly the right is there. I think I would have to state that the activities of my office in New York with a span of control that we face eighty-five thousand employees, nineteen telephone subsidiary management activities, we certainly cannot have a span of control that would lead us to determine whether the president of a telephone operating company making adjustments in the

recommended policies was not correct for his local situation, for his local scene, whether it be Everett, Washington, or Tampa, Florida. So it would have to be a very untoward event, you know, almost scandalous, and not a defection or modification of an operative practice or operative policy.

Q. Well, I don't want to belabor this point, Mr. Clerkin, but I do feel that it is of sufficient importance to tie it down.

These documents such as the ones I have handed to you, to All Operating Presidents, presidents of telephone operating companies, are in the form of a recommendation, but they are in the form of recommendation, I assume, that is based on the best [16] System, the economic interest of the General System, is that not correct? A. Yes. But many of these operating policies and practices aren't created within the Service Corp. They may get out in General distribution from the Service Corp. In many of these situations there are study groups and committees comprised of Service Corporation personnel, field telephone operating personnel who are totally expertise wherever they are, and use this document as an illustration since it is recommended, subject to the rules and regulations of governmental agencies exercised in their jurisdictions. This can vary from Indiana to Wisconsin, to any jurisdiction; so can the local management in many cases, what the people do in the evolution of the policy which is then recommended as a System policy. But certainly the local president who is in charge of that company has a right to adapt these policies as he sees fit in his judgment, running his particular company.

Q. I agree with you that the document sets forth the parameters of discretion to be exercised by the local president, but I come back again—

Mr. Lloyd: I don't think that's what he said at all, Jay. But go ahead; you characterize it the way you want.

By Mr. Ricks:

[17] Q. And the recommended policy, I recognize, could very well come from one of the operating companies, that some innovation seems to be promoting the service in its

area; and it is then recommended to all operating companies for their possible use on the basis of their local situation.

Now, I come back again to the point that if an operating company were to take action, were to adopt a practice contrary to the recommendations of the Service Corporation, and if in the judgment of the officials of GT&E that such was detrimental, is it not a fact that GT&E by exercising its voting control could change that policy?

Mr. Lloyd: You have answered that.

The Witness: I think I have answered that question once.

Mr. Lloyd: I think you have answered it three times, as a matter of fact.

The Witness: I will stand on my prior answer.

Mr. Lloyd: Jay, you can argue the consequences of stock ownership, you know, all you want. And he has answered your question as a matter of fact.

Mr. Ricks: Has he answered it in the affirmative?

Mr. Lloyd: The record will speak for itself. He answered it three times.

[18] Mr. Ricks: Well, I am afraid that the record is not going to be clear. I will tie it down with some specific questions, Mr. Clerkin, as we go along.

By Mr. Ricks:

Q. Mr. Clerkin, did you make this policy known to the National Community Television Association? A. Yes.

Q. Did that occur at a meeting between representatives of that organization and officials of—

Mr. Lloyd: Are you referring to the policy reflected by the—

Mr. Ricks: The document which was just handed back to me.

The Witness: The January—

Mr. Ricks: The January 3d, 1966.

The Witness: Yes. There were two meetings, I believe, with the officials of the National Community Television Association: one in '65, and one early in '66. And I know that policy was communicated to them. As a matter of fact, I think whatever they called their association

memorandum, the essence of this was distributed to their membership.

By Mr. Ricks:

Q. This would be—do you have the same document I have?

[19] Mr. Lloyd: Yes, I believe so.

The Witness: I believe this was the mechanism that was used. I don't know whether I saw this specific document or not.

Mr. Lloyd: Our information is, incidentally, that was a draft.

Do you have the one that actually went out?

Mr. Ricks: I would imagine that this was reduced in length before it was sent out, because it includes material at the end that was not relevant to the meeting. It is simply noted that they had a nice lunch at the Press Box.

By Mr. Ricks:

Q. There was also a report of a meeting on January 4th, 1966, bearing the printed name of a Mr. Myrick,— A. Yes.

Q. —Director of Regulatory Matters of the GT&E Service Corporation? A. Yes.

Q. Now, at that meeting Mr. Myrick's report shows that a pole lease agreement is being recommended for use by System companies. And this agreement was, I assume, drafted or refined or prepared by GT&E Service Corporation, is that correct? [20] A. Yes, I believe it was; or the Legal Department thereof.

Q. Now, Mr. Clerkin, at that meeting of January 4th, 1966, both from the report of Mr. L'Heureux of NCTA—

Mr. Lloyd: You are aware, Mr. Ricks, that Mr. Clerkin was not at the meeting?

Mr. Ricks: Yes, I am aware.

By Mr. Ricks:

Q. —and Mr. Jarmon and Mr. Gage representing General Telephone & Electronics Corporation, Mr. Gage and Mr. Jarmon made representations reportedly on behalf of the

General System regarding its policy with respect to CATV, is that correct? A. With respect to the policy?

Mr. Lloyd: I would like to have that read back.

(Whereupon, the pending record was read by the Reporter.)

Mr. Lloyd: But the question was, if I might shorten it, I believe, do the reports indicate that Jarmon and Gage made representations on behalf of the corporation?

The Witness: Well, I can't put any significance to the fact that this memorandum has Jarmon and Gage listed under General Telephone & Electronics Corporation, and the other

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[22] By Mr. Ricks:

Q. "If a CATV operator prefers pole attachments and enters into the recommended pole attachment agreement, pole attachments will be available to him." A. I am looking at the document, and that is what Mr. L'Heureux's construction of what was said at the meeting. I would have to read the memorandum of the meetings as to what Mr. Jarmon specifically said relative to pole attachments.

Q. Well, do you interpret your January 3d, 1966—although we have been shown it's 1965—release to the presidents of the operating telephone companies as reflecting the same policy that was reported by Messrs. Gage and Jarmon in this meeting, at least to the extent that I have just asked the two questions on: (1) the offering of channel service, and (2) the lease of pole attachments? A. Well, I don't think I can characterize Mr. L'Heureux's characterization or remarks, and I don't know exactly what is in the Myrick memorandum, but certainly as I said earlier in response to your question along this line, we were recommending to the telephone companies that the policy be, offer this as a tariff offering, and certainly there would probably be certain circumstances arise where the local management because their [23] pressures were external activities who live in these communities would perhaps have to grant a pole attach-

ment agreement. And so I guess, therefore, the policy statement said that, "We can't foresee all the contingencies in the CATV activity, but we recommend that you offer this as a tariff offering." But that does not rule out the eventuality that in some communities there are some circumstances that the local company would not agree to the pole attachment agreement. It did not shut it off, but it certainly was second in the list of recommendations.

Q. Having made these representations to NCTA, would CT&E have permitted operating telephone presidents to adopt a policy of flatly refusing pole attachment agreements for CATV systems? A. I can't answer that question. The judgment would have to be made by management of that local company as to local conditions, what the alternatives available to them were. I can't answer that general question. I don't know.

I am certain that subsequent to this policy statement there have been some pole attachment agreements entered into by the subsidiary companies.

Q. If the local president's policy was not based on any local situation and simply his desire to obtain the revenue from the channel service offered, and this was the only reason for his policy in refusing and to grant pole attachment contracts, would

* * * * *

[24] The Witness: I don't even know if those kinds of situations have come to our attention. As I stated we operate in ten thousand communities, and local managements are given a tremendous amount of latitude. They run their railroad from day to day. We recommend that based on studies on a system-wide basis practices, policies and procedures we think will make them a better telephone company, more responsive, lower their costs, et cetera, et cetera. I could make a speech on the subject, on standardization and so on.

* * * * *

[33] Q. Mr. Clerkin, as I understand your responses to my questions, it is indicated that the Service Corporation,

the parent really, made recommendations. Along those lines in the wording of this letter would indicate that there were more—

Mr. Lloyd: That's why I say, Jay, in the matter of fairness if you are going to refer him to one letter, refer him to the whole file, because the file is fairly clear; it comes out at the end that the operating company got its wishes.

Mr. Ricks: The operating company asked for permission to revise the tariff.

Mr. Lloyd: And got it.

Mr. Ricks: Yes. And got permission.

Mr. Lloyd: Permission? Permission, I don't know.

The Witness: Let me try to clear this up.

Mr. Lloyd: Go ahead.

The Witness: You are quoting an excerpt from a staff member of the Service Corporation, and in his day-to-day work dealing with a functional counterpart in a subsidiary telephone [34] request, permit. This man has no power to order Mr. Rowland as to what he is going to do with respect to tariff items, and if in the heat of that these words get in there through his dictating process—and this is not the policy of the company. I have said this four times now: we recommend policies and practices to the operating companies. They follow them, we hope, in most instances, I think, but they have to adjust these to local circumstances.

By Mr. Ricks:

Q. And if, in your judgment, they do not follow recommendations that you believe to be in the best interest of the General Telephone System— A. Let's talk about the General Telephone subsidiary. You keep putting this into an amorphous mass, and I have been saying to you four times that Illinois is different from Florida, which is different than Washington which is different from California. We recommend policies and practices that we hope are flexible enough that the essence of them can be adapted and tailored to the local environment. They make many such deviations and adaptations.

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[39] Mr. Lloyd: Yes, would you?

Ask him if he has ever seen the document before, for starters?

Mr. Ricks: Apparently you know the answer.

Mr. Lloyd: No, I don't know the answer.

By Mr. Ricks:

Q. Have you seen the document before, Mr. Clerkin?

A. No, I have not, sir.

Q. Do you know who prepared the document? I assume you don't, if you haven't seen it before. A. No. I am not sure who prepared the document. I assume the management of GT&E Communications, Inc., because that is how it's set out on the bottom of Page 1.

Q. Going to Page 25 where it notes in the second paragraph, "The Major Market Program as has been indicated has great revenue and service potentials for GT&E. It has been reviewed and approved by GT&E Service Corporation management and by Mr. Clerkin."

Would you know what that refers to? A. Yes. I am familiar with an effort of G-Tec at about this timeframe to develop a Major Market Program as part of their total marketing effort. As CATV evolved and as color became more and more popular, there was an opportunity to [40] market CATV services in larger and larger cities. So G-Tec, therefore, organized a marketing program that they called the Major Market Program, which means rather than just small towns that could not get a signal, which was the origin of CATV, that they would attempt to go into larger and larger towns because there was a greater opportunity for marketing service to a larger number of customers. That is what the Major Market Program means.

Mr. Lloyd: Incidentally, Jay, the art work at the end of the document, those exclamation points, were affixed by Mr. Lloyd on a copy which was Xeroxed. If you are curious about those.

Mr. Ricks: I was afraid they were perhaps Mr. Gulick's.

Mr. Lloyd: That's right. He had custody of the documents at one point, didn't he?

By Mr. Ricks:

Q. Mr. Clerkin, you have indicated by your answer that you are relatively familiar with the so-called concept of the Major Market of CATV. And this document indicates what I guess you might call some of the "blue-sky proposals" that CATV potentially could provide, such as on Page 8, shop from home, facsimile services, information, pay television, data transmission, and I don't believe that's intended to be all inclusive.

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[69] consistent with what we have just said to be a common carrier service? A. I think in this case that I would not condone totally all of those actions by them. They may have been a little far out. Although I don't know in what context he was dealing with the other parties and the information that was flown into them. This was a plea or request by G-Tec. I don't even know if the Illinois company did anything relative to it.

Mr. Wholl: I have no further questions.

Cross Examination

By Mr. Johnson:

Q. During the course of these depositions the last few days I notice there is quite a bit of movement of personnel among the various General subsidiaries.

Mr. Lloyd: That is so you can't catch up with them and serve them with subpoenas.

The Witness: That is not the reason.

By Mr. Johnson:

Q. Mr. Wright, for example, with respect to his move from the Service Corporation to GTI. Mr. Rowland moved from Indiana to Illinois. I think Mr. Bristol was working in the Illinois area, and he is now working in the Northwest area.

Would that be correct? Do you acknowledge there is [70] quite a bit of movement among the personnel in your

various companies? A. Well, there is movement among the personnel. I don't know if you can characterize it "quite a bit."

Q. Do you have a policy of any kind of shifting them around?

Mr. Lloyd: Why don't you explain how you deal in personnel?

The Witness: I spend about twenty-five per cent of my time on personnel matters. We obviously, when an opening occurs, either—

By Mr. Johnson:

Q. When you speak of "we"— A. Pardon.

Q. You say "we"? A. Me and the Vice-President of Personnel in the Service Corporation, like telephone operations.

Q. Telephone operations, that is in the Service Corporation, is it? A. The telephone operating staff within the Service Corporation, all of which is responsible to me. When we have an opening of, let's say, an engineering director within a subsidiary, normally there is a coordination discussion between [71] the management of that subsidiary and Mr. Ski of the Service Corporation. Usually they have a candidate. Some times they do not have one of their own field men they feel is strong enough to fill one of the chief engineer's positions. If they do, he is recommended.

They also do not obviously know all of the engineering talent in the whole System. We have a tremendous number of capable men. There may be a man in another subsidiary that in our judgment is ready now to be chief engineer and to discharge those responsibilities. So there is normally a dialogue between the personnel man in the subsidiary telephone company and Mr. Ski's office, out of which comes a list of three or four potential candidates. There is then a recommendation. In this case it is a chief engineer who reports to the OVP, the Operating Vice-President, a recommendation that we think Tom Jones is the best candidate. He will then be interviewed by the Operating Vice-President.

So when you characterize there is a lot of movement, there is an awful lot of promotion from within a company. There are moves from a subsidiary geographically into divisions and headquarters. When you get to the top management group of these operating companies, we try to focus on a System basis [72] subsidiary recommends an employee, they interview him, and they make up their minds yes or no.

Mr. Johnson: That's the only question I have.

Mr. Ricks: I would like to ask one question about the Service Corporation partially brought out by Mr. Wholl.

Redirect Examination

By Mr. Ricks:

Q. I take it that the Service Corporation is not intended to be a profitable operation. It is strictly a service to the operating subsidiaries? A. It bills out its expenses. It's run on a break-even basis every year.

Q. And it renders services to the operating subsidiaries. Would it be limited to operating telephone subsidiaries, or would it be to GTE subsidiaries? For example, I notice your Table of Organization shows Sylvania and electric products, and I can't tell whether the lines— it would appear not. You want to take a look at the thing? A. Yes.

Q. The Service Corporation is here. It would seem that its work is with the operating telephone companies. A. There isn't a date on this. I don't know for what year it is.

[73] Mr. Wholl: I believe I have it. January 1968.

The Witness: Is it? All right.

The Service Corporation renders services to all of the subsidiaries of General Telephone. To illustrate my organization, the Telephone Operating Staff, if you have a Service Corp. organization chart, renders service to the telephone operating subsidiaries. The Financial Department in the Service Corp., and the Legal Department, the Tax Department, the Insurance Department, the Treasury Department would render service to all of the subsidiaries

including the telephone operating subsidiaries and the manufacturing subsidiaries.

By Mr. Ricks:

Q. And the expenses that are to be allocated would include all of the subsidiaries, including the manufacturing, of expenses of the Service Corporation? A. Expenses of the Service Corp. would be allocated to all of the subsidiaries.

Q. What is the basis of the allocation?

Mr. Lloyd: Jay, what does this have to do with the issues in this case?

The Witness: Well, there is a public document on this, Bulletin A-11. It is filed every year, so it's right in the

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Excerpts from Common Carrier Exhibit 2

ORDINANCE No. 1962-37

AN ORDINANCE GRANTING TO THE GENERAL TELEPHONE COMPANY OF ILLINOIS CERTAIN RIGHTS AND PRIVILEGES IN THE FORM OF A FRANCHISE ORDINANCE AS HEREINAFTER SET FORTH.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BLOOMINGTON, McLEAN COUNTY, ILLINOIS:

SECTION 1: That the GENERAL TELEPHONE COMPANY OF ILLINOIS is hereby granted the right, privilege, authority and franchise to construct, erect, maintain, replace and operate in, upon, along, across, under and over the streets, alleys and public ways within the corporate limits, as the same now exist or may hereafter be extended, of the said City of Bloomington (hereinafter referred to as "Municipality") lines of poles, anchors, wires, cables, conduits, vaults, laterals and other fixtures and equipment, and to use the same for the transmission of voice, sounds, signals, writings and pictures of all kinds by means of electricity, and especially for the conduct of a general telephone system and business, for the period of twenty-five years from

and after the effective date of this ordinance, and thereafter until terminated by sixty (60) days' written notice, either by the Municipality to the Company, or by the Company to the Municipality.

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Excerpts From Common Carrier Exhibit 3

AN ORDINANCE GRANTING TO THE GENERAL TELEPHONE COMPANY OF ILLINOIS CERTAIN RIGHTS AND PRIVILEGES IN THE FORM OF A FRANCHISE ORDINANCE AS HEREINAFTER SET FORTH.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF NORMAL, McLEAN COUNTY, ILLINOIS:

SECTION 1: That the GENERAL TELEPHONE COMPANY OF ILLINOIS is hereby granted the right, privilege, authority and franchise to construct, erect, maintain, replace and operate in, upon, along, across, under and over the streets, alleys and public ways within the corporate limits, as the same now exist or may hereafter be extended, of the said Town of Normal (hereinafter referred to as "Municipality") lines of poles, anchors, wires, cables, conduits, vaults, laterals and other fixtures and equipment, and to use the same for the transmission of voice, sounds, signals, writings and pictures of all kinds by means of electricity, and especially for the conduct of a general telephone system and business, for the period of twenty-five years from and after the effective date of this ordinance, and thereafter until terminated by sixty (60) days' written notice, either by the Municipality to the Company, or by the Company to the Municipality.

TeleCable Exhibit 1

GT&E SERVICE CORPORATION
730 THIRD AVENUE, NEW YORK, N. Y. 10017

January 3, 1966

TO: ALL GENERAL TELEPHONE OPERATING COMPANY
PRESIDENTS

SUBJECT: CATV Distribution Policy

Gentlemen:

The following CATV Distribution Policy is recommended subject to the rules and regulations of governmental agencies exercising jurisdiction:

General System operating telephone companies may market distribution channels, under tariffs, from head-end equipment to premise drop terminations to qualified CATV companies in their operating territories.

Existing customer owned and attached facilities may be continued at customer option. Natural extensions of *existing* customer owned and attached distribution networks, as part of the same system in the same community market, may be negotiated. Existing pole attachment agreements may be reviewed for appropriateness of terms and conditions and re-negotiated as required.

Agreements providing for attachment of customer owned distribution facilities for totally new systems will be entered into only where the customer makes arrangements satisfactory to the telephone company, and others who have joint ownership, to make additional attachment space available.

Attached is an elaboration on certain specific points to aid in its implementation. The suggested tariff revisions and Pole Lease Agreement will be forthcoming in the near future.

Please take the necessary action to assure yourself that the Policy is thoroughly understood by those in your organization that deal with CATV customers and/or systems.

Very truly yours,

JAMES J. CLERKIN, JR.
Executive Vice President
Telephone Operations

Attachments

cc: All GT&E Service Corporation Officers
and Department Heads

TeleCable Exhibit 4

December 22, 1967
File: SERV 6-12

MEMORANDUM

TO: R. C. Ross

Subject: Bloomington-Normal Area CATV

The following is a summary of the activity that has taken place since our Friday, December 15, meeting with Mr. Timonthy Ives.

1. The Central Division Office has contacted those parties responsible for drawing up the necessary ordinances for presentation to and approval by the Bloomington and the Normal Councils.

Our representatives have been assured that before finalization of the ordinances, we will be given the opportunity to offer suggestions. Upon being given this opportunity, our representatives will make a very strong attempt to get a requirement written into the ordinance requiring the CATV franchise holder to lease the CATV facilities from the local communications company. (In our case, General Telephone Co. of Illinois.) Should they fail at this point to get such a clause writ-

ten in the ordinance, they then plan to make a strong appeal through contact with the City Mayors and Council Members to have this accomplished before final passage of the ordinance.

We understand that a clause on safety codes is to be included in the ordinance, but will verify this fact upon receiving a copy of the ordinance.

2. When one analyzes all the ramifications of the CATV franchise in the Bloomington-Normal area and the strong role Mr. Ives and his associates will no doubt play in the final franchise negotiations, they then become the "key" to a successful negotiation. In fact, their influence is so strong we doubt very much that any CATV Company could successfully negotiate a franchise without their support. Consequently, it boils down to the fact the company who joins forces with this group of men will probably be the successful bidder in the franchise negotiations. Recognizing this strong local influence on the part of these men, we certainly would recommend that GTEC give careful consideration toward the proposal to join forces. Should they choose not to do this, then I would think that consideration should be given toward our own Company joining forces and obtaining the franchise and providing CATV service to the community. Any other alternative to this approach might prove very costly to our future ability to provide total communications service to the Bloomington-Normal Area.

We will keep you informed on this subject as information is obtained.

~~Very truly yours,~~

/s/ R. D. GRISWOLD

R. D. Griswold

Marketing Director

RDG RKP

CC to Mr. W. C. Rowland

Mr. J. L. Malone

TeleCable Exhibit 5

December 27, 1967

Mr. W. F. Stewart
Vice President and General Manager
GT&E Communications, Inc.
730 Third Avenue
New York, N. Y. 10017

Dear Mr. Stewart:

The City Councils of Bloomington and Normal will, in the near future, consider franchise ordinances granting CATV franchises to one of several applicants.

It appears the "inside track" is held by Mr. Timothy Ives and associates. He is an officer, stockholder and manager of WJBC radio station, controlled by The Daily Pantagraph for which Mr. Ives is a director. This is an interlocking family arrangement. The families are very influential in the overall Illinois area as well as this community.

I am attaching a memorandum by our Marketing Director which gives a "thumbnail" sketch of the background of this franchise development up-to-date.

In a meeting with Mr. Ives December 15, 1967, he advised they had been approached by interested suppliers of equipment on a joint operation in which they would supply most of the money and "know-how". Mr. Ives said they were interested since they are novices at this business and prefer some such arrangement but with an established common carrier such as our Company or its affiliate, GTEC. No details were discussed as to how such an arrangement would function. We left the subject open for review.

It is our opinion Mr. Ives and associates will get the franchises. We plan to discuss further with him our building and leasing to him the facilities and services under our tariffs.

What if any action is GTEC going to initiate concerning these franchises? Would GTEC be interested in talking with the Ives group about a joint arrangement? What other suggestions do you have we haven't already covered?

The "politics" of the situation is delicate and needs to be handled with care to avoid alienating a powerful group that has been generally friendly to G.T.I.

If you have further questions please contact me or R. D. Griswold soon, as action may be taken early in January on the franchises. In the meantime, if you have samples of suggested ordinances you consider favorable, please send us copies.

Very truly yours,

R. C. Ross

Operating Vice President

Attachment

CC to G. H. Gage

R. D. Griswold

RCR SFS

December 15, 1967

File: SERV 6-12

MEMORANDUM

TO: R. C. Ross

Subject: Bloomington-Normal Area CATV

The following is a very broad outline of the activities surrounding CATV in the Bloomington-Normal Area during the past two years.

1. Original action started approximately January, 1965. At this time, several interested parties made application for a CATV franchise in both the City of Bloomington and the Town of Normal. One of these companies was a local company represented by Mr. Tim-

onthy Ives, Manager of WJBC Radio Station, Bloomington.

2. During the next few months, CATV became a topic of discussion in the communities with the pros and cons being evaluated from several different angles with nothing definite being firmed up.
3. On February 22, 1966 we accepted an application from Mr. Timonthy Ives requesting leaseback of CATV distribution facilities. I am sure that this application is not too binding legally and certainly does not assure us of a leaseback arrangement.
4. Due to public relation reasons and not wanting to upset the plans of the local influence, it was more or less determined that our Subsidiary would not file a franchise application. Later this decision was changed and I understand that GTEC was given the "green light" to go ahead and make application for franchise.
5. Sometime later there was some discussion about GTEC and the local group combining forces in a partnership arrangement and making application for a franchise under those basis, but nothing seems to have developed from this arrangement.
6. The subject of CATV in the Bloomington-Normal Area seems to have laid dormant for most of 1967.
7. On December 13 Mr. Timonthy Ives called R. D. Griswold and advised that ordinances would be passed in the Normal Council Meeting on December 18 and the Bloomington Council Meeting of December 26, outlining the restrictions and guidelines pertaining to CATV in both areas.

Upon passage of these ordinances both communities would then issue requests to all interested CATV companys asking that they present a CATV proposal for consideration.

8. I talked to Mr. Lyle Abbott in the New York Office of GTEC this morning. Mr. Abbott advised that they were very interested in obtaining the CATV franchise for the Bloomington-Normal Area, and that they would take a very vigorous approach to obtaining this franchise. He also advised that GTEC would not in any way be interested in joining partnership with the local forces, but requested this fact be *kept confidential* in our discussion with local people. I advised Mr. Abbott upon learning more information that I would get back with him to determine whether or not a representative from their Office should attend the Council Meetings in question.

/s/ R. D. GRISWOLD
R. D. Griswold
Marketing Director

RDG RKP
CC to W. C. Rowland

TeleCable Exhibit 6

GENERAL TELEPHONE COMPANY OF ILLINOIS
1312 EAST EMPIRE STREET
BLOOMINGTON, ILLINOIS 61701

May 10, 1968

Mr. Wenton F. Stewart
Vice President & General Manager
GT&E Communications, Inc.
730 Third Avenue
New York, New York 10017

Dear Wen:

This will confirm my telephone conversation with you on Friday, May 10.

The communities of Bloomington and Normal have advertised for bids on CATV to jointly serve them. These bids are to be filed no later than May 29, 1968. G'TEC is planning to vie for the franchise.

Mr. Loring C. Merwin, president and publisher of THE DAILY PANTAGRAPH; Mr. Timothy R. Ives, manager of WJBC and WSNQ Radio Stations; and Mr. Merrick C. Hayes, attorney (Dunn, Dunn, Brady, Goebel, Ulbrich & Hayes), visited me today to discuss recent developments affecting their CATV interests. They had been interested in leasing telephone facilities for a CATV service sponsored by a local group which they were representing.

At one time we had agreed to not actively enter into competition with them, with the understanding that they would lease Telephone Company distribution facilities. Apparently, there was a misunderstanding as to the extent of this agreement, and both our Company and G'TEC felt it was no longer binding. The purpose of Messrs. Merwin and Ives' visit was to indicate their dissatisfaction with G'TEC's entrance into competition for a Bloomington-Normal franchise in violation of the commitment which we had made.

In discussing this matter with them, it was evident that there was a misunderstanding and I assured them we did not intend to violate any commitment. On the other hand, we were interested in protecting our interest, and in view of the entrance of other companies into the competition G'TEC's action was justified. I also reminded them that they had not committed themselves to leasing telephone facilities, and, therefore, we felt any prior commitments we may have made were no longer valid. I assured them if they were interested in leasing Telephone Company facilities, I would discuss with you the possibility of G'TEC withdrawing from the competition. They were still in no position to agree to leasing telephone facilities, and will give us a decision on that "sometime next week."

Our people are convinced that the Merwin-Ives group have the "inside track" on securing the franchise for the Bloomington-Normal area. They represent radio, newspaper and banking interests, and exercise great political influence.

The primary interest of this group is apparently long range, with an intent to protect future developments in their particular business areas. They are interested in owning 50 per cent of the CATV business, with a professional operator owning the remainder. They have been in contact with one outside firm, but have indicated they would prefer joining with G'TEC in this venture.

Based on the assumption that the Merwin-Ives group will be granted the franchise, it appears it would be to General Telephone's best interest to join with them in a joint venture. I would suggest that if there is an interest in this arrangement, a meeting be arranged as quickly as possible to discuss this in more detail. Loring Merwin will be unavailable after May 16, and it would be desirable to have some indication as to General Telephone interest prior to that date.

It is my recommendation that we give this serious consideration.

Sincerely,

/s/ W. C. ROWLAND
W. C. Rowland
President

TeleCable Exhibit 9

GT&E SERVICE CORPORATION

730 THIRD AVENUE, NEW YORK, N.Y. 10017

January 3, 1966

TO: ALL GENERAL TELEPHONE OPERATING COMPANY
PRESIDENTS

SUBJECT: CATV Distribution Policy

Gentlemen:

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Agreements providing for attachment of customer owned distribution facilities for totally new systems will be entered into only where the customer makes arrangements satisfactory to the telephone company, and others who have joint ownership, to make additional attachment space available.

Attached is an elaboration on certain specific points to aid in its implementation. The suggested tariff revisions and Pole Lease Agreement will be forthcoming in the near future.

Please take the necessary action to assure yourself that the Policy is thoroughly understood by those in your organization that deal with CATV customers and/or systems.

Very truly yours,

/s/ JAMES J. CLERKIN, JR.
James J. Clerkin, Jr.
Executive Vice President
Telephone Operations

Attachments

cc: All GT&E Service Corporation Officers
and Department Heads

CATV DISTRIBUTION SYSTEMS

The following considerations were reviewed in developing the General System Policy regarding CATV Distribution networks:

General

1. The policy should be compatible with good faith agreements between utility companies and between utility companies and customers currently in force.
2. The policy must be fair and reasonable to all parties.
3. The policy should not prevent any qualified CATV Company from doing business.
4. The policy should not exact hardships to either Telephone Company nor CATV Company as a condition for doing business.

Marketing Considerations

1. A demonstrated current market exists for CATV *distribution networks*. General System operating companies should provide this capability.

2. Coaxial cable distribution networks have the capability of carrying numerous types of communications services of the future—beyond just CATV.
3. To preserve integrity of serving territories and plan for future business, telephone companies should own all communications capabilities in their operating areas—particularly distribution plant.
4. An effective marketing effort of distribution networks is dependent on a competitive price, and fair and reasonable tariff conditions.

Pole Attachment Considerations

1. Planning for telephone company pole space is based on telephone company requirements—*both current and future*—and *this* space is therefore not available to be shared.
2. Our responsibility for continuity of service and safety to our employees is jeopardized by others in our pole space, but our liability is not equally assignable.
3. Customer owned and attached cable plant in telephone company space must be constantly checked for plant infractions. Effecting corrections is costly and time consuming.

Points of connection between Telephone Company property and CATV Company property.

Telephone Company will construct, own, maintain and provide under tariffs, *all* components of the distribution network (main and feeder cable facilities, amplifiers, etc.) from an interface with customer provided head-end amplification equipment to termination of drops at premise terminal blocks, at locations suitable to Telephone Company.

In the case of multiple unit structures, each apartment, hotel room, etc., should be treated as a single dwelling unit.

CATV Company will construct, own, and maintain the land, tower, antenna, building and amplification equipment at the input end of the system, *and the inside wire*, TV set outlets and associated equipment beyond Telephone Company drop terminations.

Note: Telephone Companies may contract to perform construction of any of the above at their option. Ownership and maintenance responsibility would not be affected, however.

Attachment of Customer owned facilities to utility owned pole lines.

1. *Existing Systems*

Privately owned and attached CATV systems may be continued in effect at the customer option. Terms and conditions of the attachment agreements may be reviewed for appropriateness of charges and should be reviewed for compatibility of offering (service available, etc.) with filed tariff. Except for ownership and price, both tariff and attachment agreement should allow CATV Company the same service capability.

2. *Expansion of Existing Customer Owned and Attached Systems*

Privately owned and attached CATV systems may be expanded within their current "market" areas. Judgment must apply in determining the boundaries of a community's natural market area. Normally, these boundaries are defined in the CATV Company's initial franchise.

Extension requests beyond the system's currently defined serving area should be processed as new systems.

3. *New Systems*

Pole space planned for Telephone Company use—either present or future—is not available to others.

Distribution channels are available on a lease basis, as outlined by the policy.

CATV Companies may elect to modify pole lines (at their full costs) to provide necessary attachment space. This rearrangement must be satisfactory to all joint owners of the pole line.

TeleCable Exhibit 11

GT&E SERVICE CORPORATION
730 THIRD AVENUE, NEW YORK, N.Y. 10017

February 25, 1965

TO: All Telephone Operating Company Presidents

SUBJECT: Community Antenna Television Service

Gentlemen:

Until now our participation in the provision of Community Antenna Television Service has been confined primarily to contacts on our poles. These pole contact agreements have been negotiated with local CATV operators on the basis of an annual rental per pole.

Although there has been a System agreement covering the provision of the lease of cable facilities in form for several years, costs of providing the service have been prohibitive. Because of increasing stimulation and interest in Community Antenna Television Service, we believe that now might be an excellent time to reappraise System policy in this area. Recent advances in the art both in the area of equipment and technology have made it possible to provide systems for cable distribution which can be economically compatible with facilities provided by CATV operators. Accordingly, it would appear desirable to re-evaluate distribution system costs and determine rates which would be appropriate for this service. Since this is in

fact a communications service, it appears appropriate to file tariffs covering the rates and regulations, the same as for any other communications service. We are attaching, for your information, copies of tariffs which have been filed by two of our Companies. The revised Engineering specification for these systems is presently being developed and will be forwarded to you in the near future.

If you should develop a local requirement prior to receipt of this information, we would suggest that your people contact the Engineering Department here at the Service Corporation.

The various departments here in New York are currently aware of conditions which apply in their area and will be glad to assist your people in any way.

Very truly yours,

/s/ JAMES J. CLERKIN, JR.
James J. Clerkin, Jr.
Executive Vice President
Telephone Operations

Attachments

cc: Messrs. G. H. Gage
W. R. Jarmon
I. B. Jackson
K. S. Durey
G. E. Shertzer

TeleCable Exhibit 18

February 18, 1966

File: FAC LSD 1-4

Mr. George Gage, Vice President
 Telephone Operations Staff
 General Telephone & Electronics Corporation
 730 Third Avenue
 New York, New York 10017

Dear George:

In connection with our telephone conversation, following are our views regarding Mr. George White's letter dated February 10, 1966, in which our proposed sliding scale CATV tariff as presented to the Service Corporation Pricing Committee on January 25, 1966, was discouraged.

From a marketing standpoint, our present tariff has caused us to be almost completely out of competition in obtaining 32 lease agreements with CATV operators in our Company. The reason we are not competitive, of course, is that our tariff projected on the CATV industry "cash flow projection" method results in an inferior cash balance. For example, on a 165 mile distribution system, the cash balances are compared as follows:

	<u>Tenth Year Cash Balance</u>
CATV Owned System	\$661,460
General Telephone Lease	<u>414,650</u>
Difference In Favor of General Telephone	\$246,810

By comparison, the same system when computed with our proposed tariff would be:

	<u>Tenth Year Cash Balance</u>
General Telephone Lease	\$892,890
CATV Owned System	<u>661,460</u>
Difference In Favor of CATV Customer	\$231,430

Whether or not we are agreeable to cash flow projections, it is the accepted CATV industry's standard method of determining their market. Consequently, our tariff must offer the benefit of an attractive cash balance.

The loss in terms of annualized gross revenue to our Company on the above 32 lost lease agreements is approximately \$856,872 as computed by our proposed tariff. The future potential market for CATV in our Company is for approximately 10 additional systems and is estimated to gross an additional \$279,624 in annualized revenue again computed on the basis of our proposed tariff.

In total, this gives a CATV market potential in our Company alone of \$1,136,496 in annualized gross revenue or \$11,364,960 for a 10-year contract period, which is obviously well worth the effort to aggressively obtain. Our present tariff will produce very little of this market.

Mr. White's explanation of the various problems of our proposed tariff does not reflect realization of the potential market nor the desire to attain it.

Following are Mr. White's points of objection and our comments about those objections:

1. "To accept anything less than the proper revenue requirement would be subsidization in its broadest sense".

Here the concern apparently is the fact that the beginning of our proposed scale reflects a rate of return on average investment of only 5.7%. To overcome this we will consider a higher rate per quarter mile at the beginning of the scale. This would adjust the rate of return satisfactorily and still be very attractive to the CATV customer.

2. "Certainly we would not consider sharing the risks of selected businesses by accepting something less than the rate of B-1 exchange service for a period of time".

In this point, the connotation is that our proposed tariff is designed to coincide with the CATV customer's "risk" or "lien" period of income and that we do not share the same risk with the B-1 customer.

In reality our proposed tariff is based on service usage and volume, not risk. For example, the B-1 rate is higher than the R-1 rate even though the equipment used is identical for both services. The B-1 rate is higher because the equipment is used more. Other examples of "volume" tariffs now existing in General Systems are—

- a. Metered exchange service—the customer pays a monthly rate commensurate with his usage or service volume.
- b. Wide Area Telephone Service and Telpak—the same principle applies as in a. above. The customer that only requires B-1 service with little toll requirement is not offered the same benefit because he does not have the required volume.
- c. Mobile Telephone Service—this customer pays a minimum monthly rate including a set amount for calls and then is charged in accordance with usage exceeding the minimum.

Our proposed tariff can also be compared with the fact that today we construct a 300 pair cable and its associated central office equipment based on future customer usage. In many cases, these new facilities have very few customers for some time to come.

3. "We strongly believe that the method of rating should be consistent throughout the System and, where feasible, in line with the rest of the industry".

We agree completely! We do think it is time, however, for the "industry" to recognize the fact that while

being "consistent" we are not getting our share of the available market by an extremely large percent. For example, our consistency has netted approximately only 10 lease agreements out of approximately 200 working systems in the General System. This is only 5% of the market. We submit that this is not the results we would be satisfied with and should act now to take advantage of the tremendous potential yet to come.

Someone has to be first in establishing new CATV tariff methods; since our System is very sincere in its "total communications" concept, we should be first and by all means avoid excluding CATV from the total communications concept.

It is our firm opinion that even though we allow pole lease agreements, that our proposed tariff would enable us to enjoy at least 50% of the market.

Your early review and approval of our proposed tariff will be appreciated.

Very truly yours,

/s/ R. W. BRITT

R. W. Britt

Operating Vice President

TeleCable Exhibit 20

October 3, 1966

File: P LINES 1-2
X SERV 6-12

MEMORANDUM

To: Division Managers

Subject: CATV—Pole Lease Agreements

Reference: Mr. Britt's memorandum dated 10-8-65, and
my memorandum dated 11-1-65

As you know, our Company recently revised our CATV Tariff which we feel to be competitive to pole lease agreements. Therefore, our policy of not entering into additional agreements for the furnishing of pole contact rentals is now changed to afford a CATV operator the option of leasing our Company facilities or entering into a pole lease agreement.

Attached is one copy of a revised CATV Pole Lease Agreement. The revision has changed the pole contact rate to \$4.50 per contact. Existing agreements are of course continuing to charge the formal rate of \$3.00 per contact, until they have expired. It is very important while discussing new pole lease agreements, if any, that Articles 4 and 5 should be reviewed very thoroughly with the prospective CATV operator. These Articles cover space allocation on poles and point out the fact that necessary rearrangement costs are borne by the operator.

We firmly believe that our present tariff for leasing CATV facilities, in most instances, will result in an operator realizing more benefits, including profit, than can be realized from a pole lease agreement. For this reason, new pole lease agreements should not be entered into until after all possibilities for a leased system have been explored with General Marketing.

Attached to our letter dated November 1, 1965 was a sample of a letter which we suggested be mailed to city officials of the communities we serve, so that they may be made aware of our Company's position regarding the establishing of CATV. Since our position has changed to permit pole lease agreements, a letter should be mailed informing those city officials regarding our current position. Attached for this purpose is a sample letter.

A similar letter is being mailed, from this office, to the power companies.

/s/ N. A. WHITE
N. A. White
Marketing Director

NAW RKP

Attachments

CC to Mr. R. W. Britt (Sample letter only)
Mr. L. R. Bottomley (No attachments)
Mr. C. L. Cox (No attachments)
Mr. Thomas Grant, Jr. (No attachments)
Mr. R. W. Mathews (Sample letter only)

TeleCable Exhibit 23

August 15, 1967
File: SERV 6-12

MEMORANDUM

To: R. C. Ross
Subject: CATV

I understand our present rates were determined on the philosophy that we desired a rate which would protect us, yet be attractive to the CATV Companies. To accomplish this, it became necessary to be satisfied with a return of about 4% rather than the conventional 8%.

Also we should bear in mind that expenses in connection with aerial cable are less than with station equipment, C.O.

equipment or PBX equipment. Since usual administrative cost and traffic expenses were not involved with CATV distribution facilities, the "rule of thumb" of gross return on investment (35%-40%) is not required.

A summary in gross percentage reductions in rating CATV facilities would be:

Rate of Return	4%
Administrative	4%
Maintenance	6%
	<hr/>
	14%

$$40\% - 14\% = 26\%$$

$$35\% - 14\% = 21\%$$

Consequently, based on our philosophy the return on investment with our filed rates would be between 23%-26%.

It is my opinion that our present tariff places us in a very good competitive position. Though we have not sold any systems, I am sure our progress has been somewhat retarded by the present uncertainties pending before the FCC. There is no doubt that CATV Companies do not want us in the CATV business and would prefer that we not become competitive, not that they are so interested in CATV alone, but are looking further down the road when coaxial cable will play an important role in providing many communication services of tomorrow.

I feel if we are going to meet the demands of service tomorrow we must position ourselves today in order to meet competition, and in so doing maintain control of the distribution networks within the areas we serve. This might mean sacrificing in our rate of return now, but is a step which will pay dividends in the future and position us to aggressively meet competition in the "Market Place" of tomorrow.

This certainly represents the long range approach, but when you consider such filings as Broadband Transmission

and the various markets to be considered in the future, I am confident it is the only approach we can safely take.

/s/ R. D. GRISWOLD
R. D. Griswold
Marketing Director

RDG RKP

TeleCable Exhibit 25

February 16, 1968
File: SERV 6-12

MEMORANDUM

To: Division Managers
Subject: Pole Lease Agreements—CATV

Effective immediately our Company will not sign any new pole lease agreements with CATV companies proposing to furnish CATV service in any communities served by our Company. Also before renewing expired pole lease agreements, with CATV companies, a careful review should be made and every effort extended to purchase the CATV facilities involved prior to committing ourselves to a renewal of the pole lease agreement.

This approach to CATV facilities and pole lease agreements should be discussed with municipal governments for their consideration when dealing with matters pertaining to CATV facilities.

Naturally, this policy should be tempered with judgment. Should a severe adverse reaction develop, you are to immediately notify this Office for further review and counseling.

/s/ R. C. Ross
R. C. Ross

RCR RKP
CC to C. L. Cox

T. Grant, Jr.
R. W. Mathews
R. D. Griswold

TeleCable Exhibit 26

ROOM NINETEEN HUNDRED SEVEN THIRTY THIRD AVENUE
NEW YORK 17, NEW YORK

November 13, 1968

Mr. Frank Palik
Chief, Domestic Services
and Facilities Division
Common Carrier Bureau
Federal Communications Commission
Washington, D. C. 20554

Re: Your Reference 9630; File No. P-C-7213;
General Telephone Company of Illinois

Dear Mr. Palik:

This is in response to your letter of October 24, 1968 requesting certain supplemental information in support of the above-referenced application of General Telephone Company of Illinois ("General") for certification under § 214 of the Communications Act of proposed facilities in Bloomington and Normal, Illinois.

General's application is filed under protest in accordance with the Commission's decision in *General Telephone Company of California*, 13 F.C.C. 2d 448(1968), for General contends that, as a "connecting carrier," it is not subject to § 214 of the Act and, furthermore, that § 214 is not applicable to the proposed facility. General also contends that § 214 was designed to prevent wasteful duplication or unnecessary construction of common carrier facilities and consequently that the policies or practices of the applicant with regard to pole line attachments is not a relevant consideration. Nevertheless, in order to facilitate the processing of the above-referenced application so that needed lawful service may be provided under valid and

effective tariffs, the following responses are submitted to the four specific questions set forth in your letter:

1. General has not been requested to provide any facilities, and indeed does not operate, in Union City. To the extent that the question should be deemed relevant to the Bloomington-Normal area, General's Reply to Petitions to Deny filed herein on November 4, 1968 noted that Mr. Timothy R. Ives had executed an application for channel service from General on February 22, 1966. This application was on behalf of the subscribers to a preincorporation subscription agreement. The service offering involved was under a tariff on file with the Illinois Commerce Commission. The application filed and accepted by General, was not further implemented by Mr. Ives or those on whose behalf the application was submitted.

2. General has received no formal application or request for pole line attachment agreements with prospective CATV operators in the Bloomington-Normal area.

3. Consonant with its obligations as a common carrier, General will provide service under the applicable tariffs to any customer without regard to the existence of corporate affiliation. The terms and conditions applicable to such service would be those set forth in the tariffs. General has no intention of granting pole line attachments to any CATV operator in the Bloomington-Normal area, without regard to the existence of corporate affiliation.

4. As set forth more fully in General's Reply to Petitions to Deny filed herein on November 4, 1968, three prospective CATV operators applied to the Normal Town Council and the Bloomington City Council for franchises. GT&E Communications Inc. was successful. The other two, Telecable Corporation and Bloomington-Normal Perfect Picture Co. were not.

It is respectfully requested that the above-referenced application be promptly processed to grant.

Respectfully submitted,

GENERAL TELEPHONE COMPANY OF
ILLINOIS

By /s/ VERNON C. MAULSON
Vernon C. Maulson
1312 East Empire Street
Bloomington, Illinois 61701

By /s/ GEORGE E. SHERTZER
George E. Shertzer

By /s/ DONALD P. MCCORMICK
Donald P. McCormick
730 Third Avenue
New York, New York 10017

Its Attorneys

CC: The Normal Town Council
The Bloomington City Council
Hogan & Hartson
Dow, Lohnes and Albertson
GT&E Communications Inc.

TeleCable Exhibit 33

February 5, 1969
SERV 6-12

MEMORANDUM

To: W. C. Rowland
Subject: Service—CATV Policy

I reviewed our CATV pole attachment policy with Mr. George Gage today. I advised him that we did have a policy of prohibiting CATV pole attachments. I advised him that we did not plan to permit GTEC pole attachments in Bloomington and that we had so notified the FCC

by letter. I also advised him that we had informed the CATV company franchised in Pittsfield that we would not permit CATV pole attachments in Pittsfield and that the Pittsfield City Council had been so advised by the CATV franchise.

Mr. Gage stated that it is System policy that we no longer grant CATV pole attachment contracts except that we will probably continue to permit renewal of pole attachment agreements where they are already in force. He told me of Ted Brophy's opinion that we are not in violation of anti-trust or other laws in refusing permission to contact our poles. Mr. Gage stated that he does expect we will get complaints from the NCTA that we are not following the agreement we reached with them several years ago. It is his intent if pressed on this point to advise the NCTA that we have changed our policy since that time. I do not believe any such notification has been given to the NCTA at this time or that any meeting has been held.

Apparently the Service Corporation does not plan to issue a new written policy on this subject, at least at this time.

Original signed by

D. E. ANDERSON

D. E. Anderson Operating Vice
President

DEA MLS

CC to V. C. Maulson—w/attachment (your Pittsfield CATV file)

TeleCable Exhibit 34

Mr. R. E. Kepler Bloomington, Illinois May 12, 1965

Mr. C. L. Cox Bloomington, Illinois File Co F 4.1

General Telephone Company of Illinois

Fundamental Plan (Bloomington—Normal CATV Facility)
Original

The Service Corporation has requested that an economic feasibility study be made regarding the furnishing of Community Antenna Television service within the Bloomington-Normal urban area.

Therefore would you please provide an estimate of the investment and associated carrying charges in connection with the following:

A. Head End Equipment—Channel Control Equipment
for Off-air Pick-up of:

1. Channel 3—Champaign
2. Channel 5—St. Louis
3. Channel 9—Chicago
4. Channel 17—Decatur
5. Channel 19—Peoria
6. Channel 20—Springfield
7. Channel 25—Peoria
8. Channel 31—Peoria

B. Two channels for closed circuit use with inputs at the customer's studio and also from remote points.

C. One FM standard broadcast signal.

D. Feeder and distribution cable for a maximum of twelve television channels and the entire bandwidth of standard FM broadcast signals which are subject to the channel capacity of the input equipment provided above.

E. The cost of providing one channel termination which includes inside wiring on the users premises.

1. The cost of providing an additional termination on the user's premises.

The off-the-air channels for pick-up, listed above, are certainly not firm, but represent an optimum coverage which could be provided to Bloomington-Normal users. If engineering requirements or limitations prohibit such an offering then, of course, modifications will be needed.

Please advise if further information from this department is desired.

R. E. Kepler
Commercial Director

REK IJD SKS
CC: Mr. R. W. Britt
Mr. R. C. Ross

TeleCable Exhibit 35

June 7, 1965

MEMORANDUM

To: Mr. R. W. Britt

Subject: Notes on Status of CATV

Prior to February 1965, GT&E System policy on participation in CATV was somewhat vague, with the result that most companies confined their activities in this field to pole contact agreements with CATV operators. This was also true in Illinois, although we had attempted on a few occasions to negotiate agreements covering the provision of the lease of cable facilities, but such attempts were unsuccessful because our pricing was not competitive.

2-25-65 In a letter from Mr. J. J. Clerkin, Jr. to all Telephone Operating Company Presidents, it was suggested that we re-evaluate our costs of providing distribution systems and determine rates that would

be appropriate. It was also suggested that consideration be given to filing tariffs covering the rates and regulations for this service. Copies of the Kentucky and Michigan tariffs were furnished for reference.

- 4-16-65 Illinois Bell filed a CATV tariff with the Illinois Commerce Commission requesting an effective date of May 27, 1965.
- 4-28-65 The City of Springfield filed a petition for a hearing on objections to the Bell filing, maintaining the Commission had no jurisdiction over CATV.
- 4-29-65 Our Company filed a CATV tariff with the Commission requesting an effective date of May 29, 1965. Rates are identical to those of IBT.
- 5-10-65 The announcement of the formation of a new corporate subsidiary to provide CATV and related services to the public was made by Mr. J. J. Clerkin, Jr. The new organization will be known as GT&E Communications, Inc. (GTEC) with Mr. Clerkin as its President.
- 5-12-65 Mr. Wenton F. Stewart, National Accounts Sales Administrator in the GT&E Service Corporation Marketing Department, was appointed to the position of General Manager of GTEC. In his new position he will be responsible for the initial local contact and liaison work of the new corporate subsidiary.
- 5-18-65 A letter from Mr. George H. Gage informed all Telephone Operating Company Presidents that the Service Corporation is in the process of preparing a "CATV Marketing Guide" which will contain recommended procedures for all interested departments for determining potential CATV locations, estimated market potentials, and determining facilities requirements. The guide and its supporting material should be issued within the next few weeks.

In the meantime we were requested to provide Wen Stewart with available details of any CATV inquiries on CATV systems (not leased cable) which have come to our Company. We are also requested to provide Mr. Stewart with all possible information concerning a CATV system inquiry before conducting any discussions or negotiations concerning the provision of CATV service with the customer.

5-26-65 The Service Corporation was provided with a list of our exchanges in which CATV franchises have been granted or under negotiation and was brought up to date on other CATV activity within our operating areas.

5-28-65 We were notified that our tariff filing on CATV had been suspended by the Commission. This was expected since the Bell filing had been suspended previously and set for hearing, the result of which should determine the ultimate disposal of our filing.

Additional Notes

Central Illinois Electric and Gas Company, with its main office in Rockford, on April 8, 1965, filed an application with the Commission for authority to invest \$250,000 in a CATV corporation and to enter into contractual relations with the CATV Company in the Rockford-Loves Park area. If their application is granted, they may take a similar step at Lincoln. Illinois Bell and Illinois Telephone Association have filed intervening petitions. The next hearing is set for June 17.

General Commercial is gathering data for a feasibility study on a CATV operation in Bloomington at the request of the Service Corporation.

/s/ R. E. KEPLER

R. E. Kepler

Commercial Director

REK MJL

TeleCable Exhibit 36

GT&E SERVICE CORPORATION
730 THIRD AVENUE, NEW YORK, N. Y. 10017

October 4, 1966

TO: MARKETING DIRECTORS
SUBJECT: CATV

Gentlemen:

This correspondence will cancel our request for advertisements and other promotional material concerning CATV activity in your area. Wen Stewart has been using the information and expresses his appreciation for your cooperation.

We encourage you to continue to transmit any information and leads, printed or otherwise, that would indicate a possible marketing opportunity for GT&EC. This includes potential areas for CATV, growth areas, CATV systems that are offered for sale, franchise activity, and any others that may warrant investigation by GT&EC.

The information need not be restricted to General operating areas.

Very truly yours,

/s/ K. S. DWEY
for R. D. KINGSTON
Marketing Director

RDK:HEF:raf
cc: Mr. W. F. Stewart

TERMINARY

WFS
FileNORM
WHITE
STUDYCITY DWELLING AND SATURATION FOR Bloomington - Normal, IllPopulation: 49,628Dwelling Units: 16,000Pop/Per/Dwelling: 3.1Street Miles: _____ Square Miles: 11.3

PROJECTION	Time Over Turn Off	1st Yr	2nd Yr	3rd Yr	4th Yr	5th Yr	6th Yr
Population							
Dwelling Units	18747	19,500	19,250	19,500	19,750	20,000	
Cable Miles	140	143	146	149	152	155	
Dwellings Passed	18,747	19,000	19,250	19,500	19,750	20,000	
% Saturation	10	17	23	28	33	38	
Customers	1,875	3,230	4,428	5,460	6,518	7,600	

REMARKS:

① Estimated households Dec 31, 67 - Growth estimated 250 per year.

② $1960 = 11.3 \text{ mi} \times 2.7 \text{ for growth} = 14 \text{ sq. mi} \times 10 = 140 \text{ mi cable (estimated)}$ THE ABOVE FORECAST CONTEMPLATES CARRYING PEORIA 19,2531 - SPRINGFIELD 20 -
CHAMPAIGN-URBANA 3.12 - ROCK IS. 4 - MOBILE 8 - DECATUR 17 - BUT NO CHICAGO

Bloomington - Normal Area is in the Peoria 100 MCT Area (98%)

It is however on the fringe with 1 station just covering with an A,
Another station on the A line and the 3rd Peoria station only
covering with a B.From a paper review it would appear the residents of
Bloomington - Normal need a good UHF antenna directed
toward Peoria for receiving all three networks
Springfield (the state capital) also has a UHF station which could
require a rotor - VHF signals are avail. from Champaign,
Rock Is., Moline + Urbana. These will require a VHF antenna
and rotor.A local signal & related program study would be required
prior to forecasting any heavy saturationsThe actual house counts, street miles and growth potentials
all need to be checked with the Telco.

FCC approval for Chicago independents could substantially incr. Potential

PREPARED BY

WJH

DATE

4-7-67

GTEC 2737

BEST COPY AVAILABLE

from the original bound volume

BLOOMINGTON, ILLINOIS SIGNAL SURVEY - THEORETICAL

Signals received with roof-top UHF antenna:

<u>GRADE</u>	<u>CHANNEL</u>	<u>CITY</u>	<u>NETWORK</u>	<u>PICTURE QUALITY</u>
B	20	Springfield	NBC	P
B	19	Peoria	ABC	P
A	31	Peoria	CBS	P
A	25	Peoria	NBC	P
	* 33	Champaign		

- * Possible that this station has changed to 21 with maximum power which would place it in Grade A contour.

Chan. 12

With combination UHF-VHF array:

Above channels can be received plus

B	3	Champaign	CBS	P
---	---	-----------	-----	---

CATV system could carry above channels with E to F quality plus the following:

4	Rock Island	CBS
8	Moline	ABC
17	Decatur	
* 5	Chicago	NBC
* 4 9-	Chicago	IND
* 7	Chicago	ABC
* 2	Chicago	CBS

- * Confirmed with on-site survey.

cc: R. E. Prather ✓
R. L. Borth
R. D. Poorman

**CATV IMPLEMENTATION SCHEDULE
BLOOMINGTON-NORMAL
GT&E COMMUNICATIONS INC.**

ACTIVITY	MONTHS								
	1	2	3	4	5	6	7	8	9
1. Notify broadcasters	x								
2. Petition for distant signals	x								
3. Final signal and noise survey	x								
4. Appoint manager		x							
5. Finalize site selection	x								
6. Headend engineering	x								
7. Obtain tower bids		x							
8. Obtain headend bids		x							
9. FAA notification	x								
10. Marketing Plans	x	x	x	x	x	x	x	x	x
11. Public information program	x	x	x	x	x	x	x	x	x
12. Select plant building		x							
13. Select business office		x							
14. Order tower			x						
15. Obtain headend building bids			x						
16. Order and construct building				x	x	x			
17. Order electronics			x						
18. Order antennas			x						
19. Hire personnel				x	x				
20. Erect tower and antennas							x		
21. Install electronics							x		
22. Advance housewiring								x	x
23. Distribution system acceptance testing									x
24. Train technicians							x		
25. Train office representatives									
26. Order office furniture			x						
27. Order tools and test equipment			x						
28. Order trucks			x						
29. Open office to public							x		
30. Begin serving first customers									x



TeleCable Exhibit 40

April 25, 1968

File: Serv 6-12

MEMORANDUM

To: G. O. Department Heads
Central Division Manager

Subject: Service—CATV—Bloomington

As discussed in our meeting with GTEC on April 24, please arrange to have employees under your supervision pass to this Office any information they might hear of regarding the subject of CATV in the Bloomington-Normal area.

The next 30 days are very critical times and nothing should be overlooked. Consequently, we are asking that any information regardless of how insignificant it may seem be referred to us.

The judgment of the information's importance will be left up to GTEC after it is passed on to them by this Office.

We solicit your co-operation in this matter.

/s/ R. D. GRISWOLD
R. D. Griswold
Marketing Director

RDG RKP
CC to D. E. Anderson
H. R. Baldwin
R. C. Ross

TeleCable Exhibit 41

GENERAL TELEPHONE COMPANY OF ILLINOIS
1312 EAST EMPIRE STREET
BLOOMINGTON, ILLINOIS 61701

May 3, 1968

WILLIAM C. BOWLAND
PRESIDENT

Mr. Wenton F. Stewart
Vice President & General Manager
GT&E Communications Inc.
730 Third Avenue
New York, N. Y. 10017

Dear Wen:

Thank you for responding so promptly with a request for CATV distribution cable in the City of Bloomington. I was impressed with your presentation on proposed service for Bloomington, and we would like nothing more than to participate with you in this venture.

It appears, however, that we will be unable to move as quickly on this project as I know both of us would like. Both the City of Bloomington and the Town of Normal have passed ordinances requiring the CATV operator to be franchised. Our filed tariff with the Illinois Commerce Commission states that we will not lease facilities to a CATV company that is not franchised by the community if so required by ordinance. Both these ordinances are relatively new, and we would be flaunting local governmental agencies should we choose to ignore them.

I am pleased that G'TEC has taken an interest in the Illinois area, and I hope you will be able to interest yourself in providing CATV service in those communities where no CATV franchise ordinance exists.

We will do what we can to influence Bloomington and Normal councils in awarding the CATV franchise to your

Company. We recognize the benefits to all of us in this business.

Sincerely,

/s/ W. C. ROWLAND

TeleCable Exhibit 42

GENERAL TELEPHONE COMPANY OF ILLINOIS

INTRA-COMPANY MEMORANDUM—PUB REL 1-7

To D. B. Fester Office Division—Normal
From J. C. Higgins Office District—Bloomington
Subject Public Relations-Exhibits & Displays (CATV)
Date 5-6-68

For filing purposes, confine this memorandum to one subject only

Message: *Ref:* Our discussion via phone today copies of correspondence regarding a trip to Adrian, Michigan, are attached, plus a copy of Mayor McGraw's reply of May 1, 1968.

Both towns, as you are well aware, are involved in day to day disputes over wage contracts, picket lines, etc. As of today, we have not heard from Normal. Considering the circumstances, it would seem logical to postpone the trip until later. I'll notify you further as more info is received.

Signed /s/ J. C. HIGGINS

(Attachments)
Reply

Signed _____

Person receiving memorandum—
Retain this copy for your record

Originator, detach this copy, send remaining set.
Carbon intact, for use of replier.

CITY OF BLOOMINGTON
109 EAST OLIVE BLOOMINGTON, ILLINOIS

May 1, 1968

Mr. J. C. Higgins
District Commercial Manager
General Telephone Company
109 East Market Street
Bloomington, Illinois

Subject: Public Relations—Exhibits & Displays

Dear Mr. Higgins:

Thank you for the fine invitation to Adrian, Michigan, on May 22, 1968. Unfortunately, at the present time, none of our city officials will be able to go. We will contact you by May 20, 1968, in case someone may decide to go.

Thank you again.

Sincerely,

/s/ BOB MCGRAW
Bob McGraw, Mayor
City of Bloomington

BM/jlp

109 East Market Street
Bloomington, Illinois
April 30, 1968
823-8001

PUB REL: 1-7

Mr. Gordon B. Jaeger, City Adm.
Normal City Hall
124 North Street
Normal, Illinois

SUBJECT: Public Relations—Exhibits & Displays

Dear Sir:

I wish to extend to you, Mayor Baugh, your legal counsel and City Councilmen an invitation to be our guests on Wednesday, May 22, 1968, on a trip to Adrian, Michigan.

We plan to charter a plane to Toledo, Ohio, and make a short motor trip from there to let all those interested actually see a CATV system of ours in operation. Questions will, of course, be in order, and we feel that many benefits may be obtained, since CATV will be a new venture in the Bloomington-Normal area.

This same invitation is also being extended to Bloomington officials, with no strings attached for either community.

In order that we might plan accordingly, I would appreciate receipt of knowledge of those planning to make the trip by no later than Friday May 10, 1968.

Very truly yours,

J. C. Higgins
District Commercial Manager

JCH/crn

109 East Market Street
Bloomington, Illinois
April 30, 1968
823-8001

Pub Rel: 1-7

Mayor Robert McGraw
City Hall
Bloomington, Illinois

SUBJECT: Public Relations—Exhibits & Displays

Dear Sir:

I wish to extend to you, your City Manager, legal counsel and City Councilmen an invitation to be our guests on Wednesday, May 22, 1968, on a trip to Adrian, Michigan. We plan to charter a plane to Toledo, Ohio, and make a short motor trip from there to let all those interested actually see a CATV system of ours in operation. Questions will, of course, be in order, and we feel that many

benefits may be obtained, since CATV will be a new venture in the Bloomington-Normal area.

This same invitation is also being extended to Normal officials, with no strings attached for either community.

In order that we might plan accordingly, I would appreciate receipt of knowledge of those planning to make the trip by no later than Friday May 10, 1968.

Very truly yours,

J. C. HIGGINS

District Commercial Manager

JCH/crn

RLC-

CATV - Bloomington

Please ~~initiate~~ initiate
a project to engineer and
install a CATV system in
Bloomington - Normal on an
expedited basis

① Determine who will do it.

② A call to Clavel ^{Dr. 1321} Bristow of
HETec can tell you the
first area to start in.

219-484-4156

③ Before actual installation it
would be well to plan
on inspection trips to an
existing installation for Plant
and Engg people to discuss
techniques.

C. L. Cox

BEST COPY AVAILABLE

from the original bound volume

~~FILE 6/2~~~~FILE 6/2~~File SERV C-12
CATV Bleeding

TELECABLE EXHIBIT 44

Memo to File

Buddy Strahn - GT&E Communications will be in Tuesday afternoon 5/22/68 to make field strength measurement for CATV service in Bleeding - Normal.

He has requested that we arrange for access to the top of the State Farm building for this purpose.

Measurements will be required at approximately
8 AM 2 PM and 8 PM.

Equipment to be transported to top:

- 1 Mast - 10'
- 1 Antenna
- 1 Field Strength Meter

GT&E Tel No 219 - 424 - 4156
(Jack Messerli.)

JD [Signature]

Don McHenry will arrange for access to State Farm. (823-3001)

BEST COPY

from the original

Preliminary CATV Signal Survey

5/26/60

The H.E. Stokes of GTE Communications has agreed to conduct a preliminary signal survey of area television stations for possible use on the pending CATV system for Wilmington, Delaware.

The original plan was to gain access to the State Veterans Insurance Co. Building (through Don MacLean) and conduct the survey from there. However, when Stokes was contacted on being one of the told by ICS Administrator, instead of going in addition to the State Veterans building. At this point, a cable to ICS permission was granted providing we obtain a letter of introduction from someone of authority in the building. This was accomplished with respect from Don MacLean, Security Director.

After this was accomplished access to State Veterans was not possible until later. So investigation of the building was not made. After actually looking the situation over, it was decided that Manchester Road - a 17 story building - would best suit the purpose. There was then no need to use the State Veterans Building and Don MacLean was notified accordingly.

Access to the building was gained and the following equipment was assembled on the sun deck of the 7th floor:

1. A battery operated test
2. A power supply strength meter
3. An old channel antenna on a tripod stand and a 15' foot mast.

After this was completed a search for other signals was begun. Since we were quite high and many stations were available it took considerable time to try to identify the signals on signals being received.

Being a complicated job, signal strength and position parallel readings were taken for each station. This was done once on Tuesday (5-28) and then again on Wednesday (5-29) with the results obtained shown on the attached sheets.

At the conclusion of the first run Stahler speculated that since the signal strength of the Chicago stations was variable they would probably need to be put on a continuous system. However, he stated that this was a preliminary survey and he felt that a further survey at 100' was necessary before a definite decision could be made.

At the conclusion of the second reading on Wednesday, Mr. Bill Smith, Manager of Community relations (C.C.) joined us to investigate the possibility of using the units of signals properly as a time unit. There was some concern about the close proximity of power lines and whether there was sufficient room for at three. These items were to be looked into by the Engineer.

Weathered Notes:

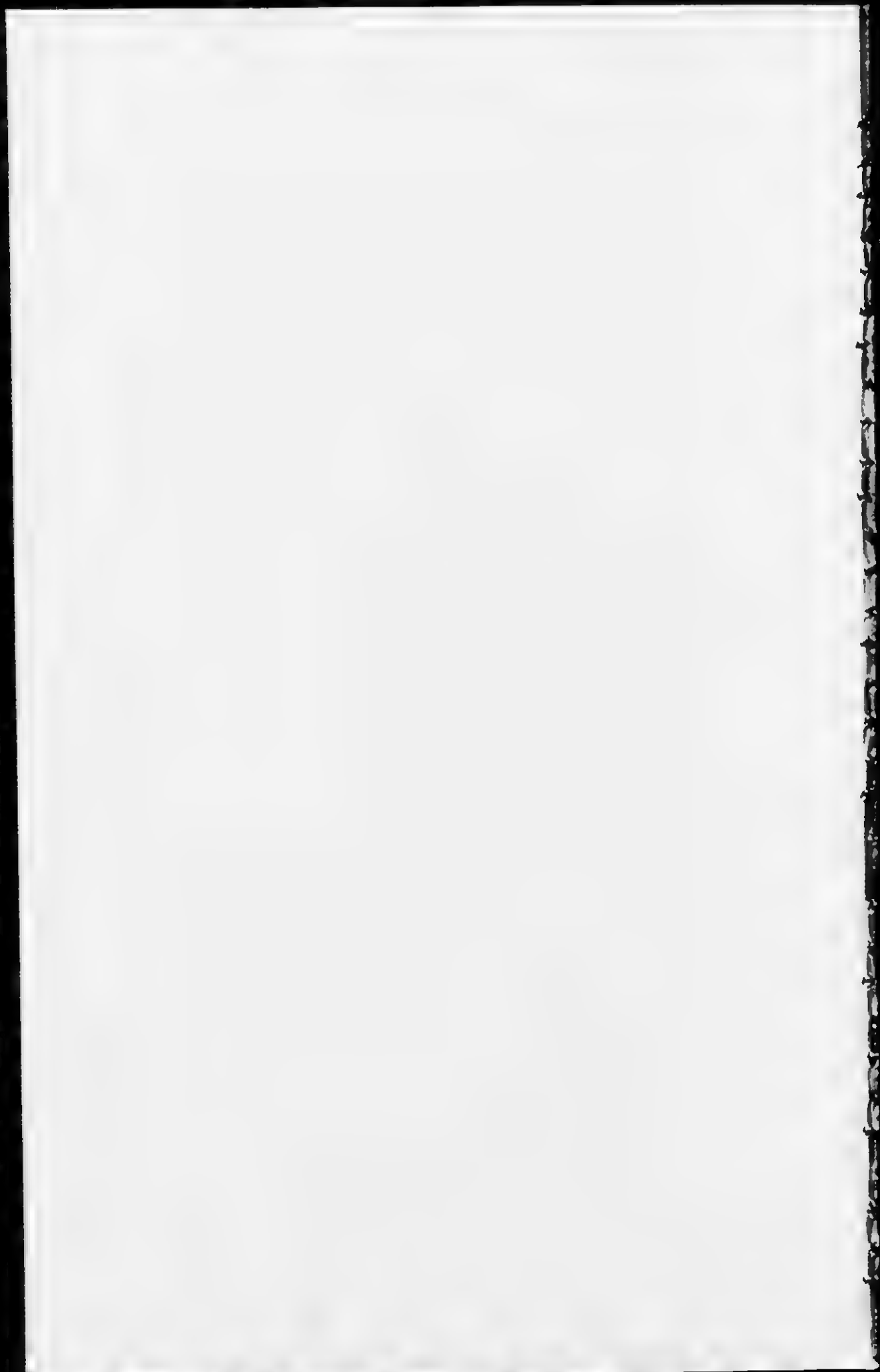
It is noted that on several occasions satellite pictures were received on the television but the picture strength meter did not have enough signal to indicate it. It seems probable that the television set was more sensitive.

BEST COPY

from the original

from the field strength meter. This only happened on the weaker
stations, of course. These situations are caused by the antenna itself.
With mentioning, I think, was the greatest cooperation we
received from the University Security Department. On both
days we were on the building until midnight and no
one complained.

T.P. Wheeler 5-31-68



TeleCable Exhibit 46

June 6, 1968
Mr. W. Schamburg
Division Engineer
General Telephone Company of Illinois
Mulberry Street
Normal, Illinois

Dear Bill,

Enclosed is a copy of the exhibit map we submitted with our application for a franchise to the city. The engineering and construction interval for *each* phase starts with the date that the franchise is awarded. It may be sixty to ninety days before the award is made.

Section 7, paragraphs (a) and (b), of the ordinance pertains to the time of performance. Basically this says that thirty per cent of the serving area must be operational within 360 days of the date of the franchise award and the whole area must be operational in 540 days from the date of award.

We are happy to hear you are getting started on this project. Any efforts expended between now and the date the franchise is awarded will make it just that much easier to meet the quoted construction intervals.

If further information is needed that we can supply, please do not hesitate to give us a call.

Very truly yours,

CLARE BRISTOL

Manager—Community Relations

CB/lh

cc/Mr. R. D. Griswold
Marketing Director
General Telephone Company of Illinois
1312 E. Empire Street
Bloomington, Illinois 61701

Enclosure

TeleCable Exhibit 47

MEMORANDUM

Date: June 28, 1968

File: FAC LSD 1-4

TO: Mr. C. L. Cox, Chief Engineer

SUBJECT: CATV—Bloomington

REFERENCE: Your Memorandum of June 20, 1968

In regards to the initial engineering of the Bloomington-Normal CATV System, as proposed in your memorandum, there are several basic questions which must be answered prior to our starting engineering.

1. Head end

- (a) We will need to know the exact location of the head end equipment building.
- (b) How is the CATV cable terminated and protected in the head end building?
- (c) Who will carry on negotiations with GETEC relative to our method of entering building, any grounding required, and other physical entrance questions?

2. How is remote commercial power to be obtained for trunk line amplifier locations? Will it be on a metered or non-metered basis so contacts can be made with Illinois Power Company?

3. Will the GETEC Business Office require something other than a regular CATV service drop? This location is necessary if other than service drop is used.

4. Will we require a distribution leg run into our Bloomington and Normal Central Offices for monitoring purposes?

5. To what point, and the method of termination, will our facilities be taken in the case of multi-unit buildings?

- (a) Apartment houses
- (b) Buildings with existing CATV Networks
- (c) Governmental agencies such as ISU and IWU and the school system

We realize some of these questions may be answered in the forthcoming CATV School, but we are bringing all of them to your attention at this time so that prompt answers may be received.

/s/ W. E. SCHAMBURG
for J. L. Malone
Division Manager

JLM WES RBS JMC

TeleCable Exhibit 48

MEMO TO FILE

Subject: Bloomington/Normal (Coordination with GTCI)
At 11:00 AM September 5, 1968 the first coordination meeting was held with General Telephone Co. of Illinois since receiving the favor of the cities on the CATV franchise. In attendance for all or portions of the meeting were:

L. Cox	Chief Engr.	GTCI
R. Griswold	Mktg. Director	"
P. Fugate	Engr.	"
R. Christian	Plant Ext. Engr.	"
T. Tingley	Engr.	"
C. Schanbacher	Spec. Project Engr. (Div.)	"
J. Malone	Div. Mgr.	"
R. Walker	Div. Engr.	"
R. Hillane	Supplies Supv.	"
V. Maulsen	Attorney	"
L. Carter	Gen. Com'l Supv.	"
L. Thomas	Region Mgr.	G'TEC
R. Prather	Region Mktg. Mgr.	"
C. Bristol	Mgr. Comm. Relations	"
J. Messerli	Region Engr.	"
H. Strahn	Plant Engr.	"

Basically, the meeting covered (in order) those items on the attached agenda.

At the outset Mr. Cox announced that Carl Schanbacher had been appointed as Special Project Engineer to coordinate the CATV construction from start to finish.

Under Item 2, Time of Performance Deadlines, it was pointed out by G'TEC that "time" has not started as yet and that it would be approximately 3 to 4 weeks, or around October 1, 1968 before the franchise would be formally accepted by G'TEC.

Under Item 4, Telephone Co. Activities Schedule, Mr. Cox pointed out that the telephone company plans to have their 214 application ready to go forward by October 1, 1968. They tentatively plan to make it an "emergency" application due to the time of performance and performance provisions of the cities' ordinances.

Under Construction Phases, Item 5, it was questioned whether it would be necessary to adhere to the four phase schedule as presented to the city on an exhibit map included with our bid. It was felt that with the current tower site location, it *may* be more efficient to change the sequence of completion of the four phases. It was pointed out, however, that this plan of construction was one of the major points in favor of G'TEC's bid and a lack of such a plan was a point against the two competitive bids. If we were to change it radically, the city councils should be advised and this action would likely precipitate some protests from the local competing group. It was resolved that the original four phase plan could be followed with very little change.

Mr. Cox acknowledged that material procurement would probably be the tightest in meeting schedules, but that special expediting would be done to assure receipt of necessary materials on time.

A telephone company representative questioned what our policy would be regarding the servicing of areas outside the shaded areas of the exhibit map. Mr. Prather outlined our procedure for extension approvals and Mr. Bristol pointed out a provision of the ordinance requiring approval of the city councils before extensions into township areas could be made. It was agreed that we would be concerned with implementing construction to all built-up areas within the current corporate limits within the time of performance limits of the ordinance, however, the Telephone Company should develop an overall system design that would make convenient extension to likely new development areas at later dates.

The G'TEC System Specifications, Test Procedures, Service Objectives and System Maintenance practices were distributed, however, not covered in detail at this meeting. A brief discussion of service objectives revealed a difference of opinion between the telephone company representatives and G'TEC representatives on clearing times. The Telephone Company people felt that our clearing time objectives could not be easily met, however, they would attempt to do so. It was pointed out that these stated goals are being met in some of our totally owned systems.

Under Item 10, Broadband Services Contract, Mr. Maulsen covered the fact that their new FCC wide spectrum tariff had just been filed to become effective August 31, 1968 and an identical tariff would be filed with the Illinois Commerce Commission to supercede their existing CATV tariff. He suggested that rather than negotiating any lengthy contract which repeated provisions of the tariff, all that was needed was an application letter from G'TEC requesting service under their FCC tariff No. 1 and including any specific details (such as areas to be served, technical specification, etc.). It was agreed that the Telephone Company would prepare a draft of such an application based on discussion and agreements at this meeting.

Several questions or objections regarding the new tariff was raised by G'TEC. These were as follows:

Section 2.11, Liability (Page 16).

This section states that the Telephone Company is not liable for any defacement or damage to the premises of a customer caused by ordinary negligence of its agents or employees.

Section 2.12, Interruption of Service.

This section allows the Telephone Company two hours to clear trouble before any monetary risk on their part is involved and then the amount of risk even for a very lengthy outage poses very little incentive for quick restoral of service.

Section 2.14, Special Construction.

Condition (1) specifies that special construction charges shall be required to provide underground or buried facilities. It was conceded by the Telephone Company that this would apply only when existing or proposed aerial routes for either telephone or electrical service were available, however, if all other facilities in the area were underground, then no special construction charge would be assessed for placing CATV facilities underground.

Condition (2) under Section 2.14 provides for special construction charges where the customer specifies a routing of facilities other than that which the Telephone Company would normally utilize. G'TEC pointed out that often an honest difference of opinion can arise concerning the best point of drop attachment to a house depending on whether one is looking at just the outside drop and grounding point, or the entire drop plus inside wire run to the TV set location. No particular agreement was reached on how these differences will be handled.

In the final paragraph of Section 2.14 of the Telephone Company's tariff it allows for special construction charges for "expedited construction". It was agreed by Mr. Cox that nothing in our original construction plan and schedule would be considered "expedited construction" for which extra charges would apply.

Section 3, Rates and Charges.

A protest was made by G'TEC to the higher rates in the new tariff as compared with the former ICC tariff. A discussion of the old and new rates revealed that G'TEC's cost under the new tariff will be approximately \$500.00 a month higher at 15% saturation on up to approximately \$5000 more a month at 30% saturation. A Comparison of Revenues sheet that had been prepared by the Telephone Company was made available. A copy of this is attached. A copy of the new tariff is also attached.

G'TEC also questioned the method of determining how much of the trunk would be considered "point-to-point service" and whether the rate for "point-to-point service" would be charged for certain trunking arrangements that may be made for the convenience of the Telephone Company. No specific answer to this could be given at this meeting, however, it was conceded by the Telephone Company representatives that excess trunk places to meet the telephone company's ultimate requirements would not be charged to us.

/s/ C. N. BRISTOL

C. N. Bristol

Mgr. Community Relations

CNB/nd

TeleCable Exhibit 49

MAJOR MARKET FRANCHISE ACTIVITY
STATUS REPORT

CITY Bloomington-Normal HOUSEHOLDS 18,747
CABLE MILES 140

DATE	BY	ACTIVITY
4/24/68	WFS CNB LET	Made Major Market Presentation to General Telephone of Illinois at Bloomington. President Rowland and entire staff present. Griswold established as coordinator for information gathering for telephone company.
4/25/68	LET CNB	Contacted Griswold. Picked up copies of tariff and correspondence with Ives regarding leasing telephone company facilities. Suggest to and Griswold agreed to contact city officials about visit to G'TEC operations in Adrian, Michigan.
4/25/68	WFS	Letter to President Rowland applying for 150 miles of cable
5/ 3/68	TELCO	Letter from Rowland suggesting we wait for franchise notice of bids for Joint-CATV Application issued by both Bloomington and Normal
5/ 3/68	Cities	Notice of bids for Joint-CATV application issued by both cities
5/ 7/68	TELCO	Notice of bids and joint-CATV franchise proposal and application forms sent to L. Thomas at Fort Wayne
5/ 9/68	CNB	Made trip to Bloomington to determine areas to be served and construction phases. Met with Division Manager J. Malone, Division Engineer R. Schamburg and Division Marketing Manager R. Nowers. 4-phase plan developed
5/10/68	CNB	Contacted City Managers at both Bloomington and Normal and learned that local telephone company commercial manager had written letter inviting city officials to Adrian. Invitation restated and emergency alert system emphasized. Found Bloomington had one councilman and fire chief interested in going. Confirmed 5/22/68 as date for trip

DATE	BY	ACTIVITY
5/13/68	LET	Learned FCC had just reviewed waiver requests for Illinois and that we <i>may</i> be able to get extension for filing. Advise New York
5/15/68	CNB	Called city manager, Normal, to let him know two people from Bloomington were going to Adrian on 5/22/68 and would welcome two from Normal
5/17/68	CNB	Wrote to City Manager confirming above
5/21/68 and 5/22/68	WFS } LET } LDB }	In Bloomington to discuss overall profitability of CATV in area. WFS had meeting with Ives. Attorney David Davis, Sr. contacted and agreed to represent G'TEC
5/21/68	CNB	Went to Bloomington, contacted Normal and learned Mayor and Chief Fire Inspector wanted to make trip to Adrian
5/22/68	CNB	Took 2 representatives each from Bloomington and Normal to see Adrian System
5/23/68	CNB	Met with attorney Davis to make plans for submitting CATV application. Met with Griswold and W. Wright to relate outcome of trip to Adrian
5/27/68	CNB	Davis called and said he had rearranged his plans so that he could spend the morning of 5/29/68 with CNB to review application and submit to city
5/29/68	CNB	Went to Bloomington, assembled CATV application with Davis, filed with City Clerk at 10:50 A.M. and attended the application opening meeting at 11 A.M. Only two other applicants met filing time—Ives group and Tele-Cable Corp, Norfolk, Va. A review of rates indicates G'TEC is in Ballpark. Complete copies of all applications to be sent to each applicant.
5/28/68 and 5/29/68	HES	Signal survey made from top of college dorm
5/30/68	HES	Noise measurements made at telephone company property
	CNB	West of town

DATE	BY	ACTIVITY
6/ 5/68	CNB	P.K. Fugate, General Telephone Co. of Illinois Engineer (General) called to inquire about construction phases and to say TELCO was proceeding with material ordering and engineering
6/ 6/68	CNB	Bill Schamburg, Division Engineer General Telephone of Illinois called about construction phases and states he is having a meeting today to start ball rolling on engineering
6/ 7/68	CNB	Davis called. Just received copies of other bids, will send to Wayne today
6/18/68	CNB	Telephone call from Bob Smith, District Engineer, inquiring a number of house drops at turn-on. I gave him our 5-year project
6/21/68	CNB	Called Davis. He reported proposals still in hands of city's consulting firm
6/26/68	CNB	Heard rumor through C. Bittick that Women's Club or Senior Citizen's Group were considering getting up petition against GTEC because of poor service experience with General Telephone of Illinois. Called Davis to alert and advise us if he can learn any tangible evidence of this
7/17/68	CNB	Call from Davis. The cities' consultant's recommendation is in hands of city attorneys —Not yet released to council. May be on council agenda for 7-22-68. Davis wondering about our position with FCC. Davis had not heard from our counsel in Normal
7/29/68	CNB JRM Davis	Met with 2 city att'ys, 2 city mgr's & J. C. Barnard Consultants at their request. They inquired about 214 problem. We said it would not materially affect our proposal. If necessary GTEC would construct its own system. Asked if we would object any ordinance provision prohibiting other types of communications than CATV unless later approved by council, we said "no objection." Apparently this committee meeting with other bidders also.
8/ 2/68		Joint committee recommends GTEC!!
8/ 5/68	CNB JRM	Attended Normal council meeting for franchise award. Last minute telegram & letter

DATE	BY	ACTIVITY
	Davis	from competing bidders served to co-[incomplete word] the council & caused them to table & seek joint meeting with Bloomington to investigate allegations made
8/ 6/68	CNB	Contacted several city officials in both Bloomington & Normal to clarify issues brought up by competitors in their communication with the city. Worked with D. Davis, Jr. in preparing rebuttal statement to use as and if necessary
8/ 7/68		
8/ 8/68		
8/12/68	CNB	Attended Bloomington council meeting. Council tabled recommendations to award franchise & voted to hold joint meeting with Normal
	Davis	
8/13/68	CNB	Learned joint meeting to be held 8/15/68 in Normal. Mayor B-[incomplete name] of Normal to Chair. He is familiar with GTEC —Made trip to Adrian
8/15/68	CNB	Attended joint meeting to air complaints of other bidders. Read final prepared statement after statements by others heard. During question period we confirmed our intention of starting system immediately and would not ask for time due to tel. co's. 214 application
	JRM	
	Davis	
8/19/68	CNB	Attended Normal council meeting. Council resolved to award to G'TEC!!
	Davis	
8/26/68	CNB	Attended Bloomington council meeting. Council resolved to award to G'TEC!!
	Davis	
8/27/68	CNB	Picked up lease-option documents on United Video's tower site
9/ 4/68	CNB	Program speaker for Normal Rotary Club
9/ 5/68	CNB	Attended coordination meeting with G.T. of Ill. They are working toward having their 214 application ready by Oct. 1, 1968. Our notification and acceptance should take place about same time. Time of performance clock starts running—270 days to have 1st section ready. Tel. co's. new tariff shows higher cost to us than originally planned.
	LET	
	REP	
	JRM	
9/ 9/68	HES	Surveyed proposed tower site under option by United Video.
9/ 9/68	LET	Letter to N.Y. Office giving details on coordination meeting. Suggested preparation work on performance bonds, notification letter, microwave contract, tower site lease

TeleCable Exhibit 50

MEMORANDUM

November 7, 1968

To: Mr. C. L. Cox

SUBJECT: Construction of CATV System by GTEC
(Bloomington-Normal)PROBLEM :

How would GTEC construct a CATV system in Bloomington-Normal without a pole rental agreement with General Telephone Company of Illinois.

SOLUTION :

The findings listed below are based on 16.5 miles of plant at scattered locations throughout Bloomington and Normal. This represents 10% of the total system.

1. That 37% of the plant would be placed on power company poles, which the telephone company does not contact.
2. That 28% of the plant would be placed on power company poles presently under Joint Use Agreement with the telephone company.
3. That 35% of the plant would be direct buried.

ASSUMPTION :

1. The Illinois Power Company will grant GTEC a pole agreement as the third party in our agreement with them.
2. GTEC would construct a system in accordance with G.O. 160 with the Illinois Commerce Commission.
3. The City Councils would not let GTEC establish new aerial routes in their entirety, but would let them fill in spaces in existing power company leads.

4. That GTEC first preference would be aerial construction, due to the flexibility and ease of placing Drops in the future, and that buried construction would be a last resort.

/s/ J. L. MALONE
J. L. Malone
Division Manager

TeleCable Exhibit 52

March 3, 1969

Mr. Charles L. Baugh, Mayor
Town of Normal, Illinois

Members of the Normal Town Council

Mr. Clarence Bigelow, City Administrator
Town of Normal, Illinois

Mr. Robert McGraw, Mayor
City of Bloomington, Illinois

Members of the Bloomington City Council

Mr. S. W. McAllister, Jr., City Manager
City of Bloomington, Illinois

Gentlemen:

This communication is to inform you of the status of construction of the Cable TV system in Bloomington-Normal:

1. Immediately upon receiving the franchise award to provide cable TV service to the residents of Bloomington-Normal, arrangements were made with the General Telephone Company of Illinois to lease distribution cable facilities from that company. On October 3, 1968, General Telephone Company of Illinois made application to the Federal Communications Commission for a certificate to construct cable facilities under Section 214 of the FCC regulations.

2. Due to petitions filed with the FCC by other CATV applicants, General Telephone Company of Illinois has not been granted a certificate under Section 214. In keeping with commitments to the City of Bloomington and Town of Normal, GT&E Communications Inc. has made the decision to construct the cable system in Bloomington-Normal without the aid or use of the facilities of the General Telephone Company of Illinois.
3. The management of the television broadcast stations that will initially be carried on the Bloomington-Normal cable system were notified of our intentions to construct such a system on September 25 and 26, 1968. Copies of the notifications to the broadcasters were submitted to the FCC as required by the regulations.
4. An agreement has been consummated with the Illinois Power Company to lease space on the poles in the area. It is planned to construct approximately 60% of the cable facilities on Illinois Power Company poles with the remaining 40% of the facilities to be placed underground.
5. A contract was awarded by GT&E Communications Inc. to the Jerrold Corporation on February 25, 1969 to construct the cable system and furnish the electronics equipment for the Bloomington-Normal system.
6. A lease has been negotiated for a tower and electronics building site in Dale Township. This is on property owned by Mr. John English. Erection of the tower and facilities will commence within 14 days following approval of both Councils to construct at this location.
7. The proposed construction methods have been reviewed with both Bloomington and Normal city engineers and the director of the Normal street development. Guidance has been received from these groups regarding construction requirements.

GT&E Communications Inc. proposes to commence construction on or before March 19, 1969, and will commence operations as defined and stipulated in the franchise ordinance. Further progress reports will be submitted as construction work progresses.

Very truly,

Tom M. Mayers

TMM/jah

TeleCable Exhibit 54

T. M. Mayers

April 3, 1969

Joint Construction Meeting of April 1, 1969 with Illinois Power Company, General Telephone Company of Illinois, Jerrold Electronics Corporation and G'TEC

The following are minutes of the Joint Construction meeting held on April 1, 1969 with Illinois Power Company, General Telephone Company, Jerrold Electronics and G'TEC with the following gentlemen present:

Illinois Power

Mr. K. Barnett
Mr. G. Wetzel
Mr. J. Wiggins
Mr. G. O. Chester

General Telephone

Mr. C. Shanbacker
Mr. B. Walker
Mr. T. Wright
Mr. D. Hulslander

Jerrold Electronics

L. C. Pace
D. Baer
J. Johnson

G'TEC

T. M. Mayers
G. J. Hall

During the meeting, we discussed make-ready work and the associated engineering. The first response of Illinois Power, upon hearing the June 19 completion date for phase one, was that this date was impossible to meet. The reason

for their statement was a lack of available engineering people in their company. They did state that they would make an engineer available on Thursday morning, April 3, 1969 to survey the make-ready work with General Telephone and Jerrold personnel. G'TEC agreed to pay the half-time premium for the Illinois Power Company engineering if it is necessary to meet the June 19 date. Illinois Power stated that they have entered into an agreement with General Telephone to balance out ownership of poles in Bloomington and Normal over the next three years. The agreement states that a third party on the Illinois Power pole would be inherited by General Telephone. Illinois Power indicated that they would go along with temporary violation on pole space providing that we would not violate the 40" neutral space. Any violations would therefore violate the Telephone Company's G.S.P. on a temporary basis.

Mr. Tom Wright of the Telephone Company indicated that under no circumstances would they allow a condition to exist that did not allow General Telephone to have their 2' of pole space. He did indicate that possibly a temporary violation of this 2' area would be tolerated. Mr. Wright also stated that it was not the policy of General Telephone to change ownership of their poles that were singularly owned in one lead. Tom Mayers indicated that there seemed to be a difference of opinion and suggested that Mr. Wright clarify General Telephone's position on this based on Bill Rowland's previous statement. The local Telephone Company exchange representative wanted to make sure it was clear that prior to any underground work his office be contacted for cable locating and service location of telephone equipment.

It was agreed by all parties that after a short time of field work was accomplished, they would again meet to iron out the problems in more detail.

G. J. HALL

GJH/skf

Mr. C. L. Cox



TELEGRAPH EXHIBIT 55.1
GENERAL TELEPHONE COMPANY
OF ILLINOIS
1312 EAST EMPIRE STREET
BLOOMINGTON, ILLINOIS

DATE 4/8/69

FOR FILING PURPOSES, CONFINE THIS MEMORANDUM TO ONE SUBJECT ONLY.

STEC has raised question of whether they can
attach to a pole where our pole and get there
12" separation of side wiring. Rather than
changing out the pole?

[Signature]

SIGNED

REPLY

Believe we resolve this
question & have work in temporary, we
prefer try attach to pole

DATE 4-16-68

C. L. Cox

SIGNED

PERSON RECEIVING MEMORANDUM - RETAIN THIS COPY FOR YOUR RECORD

*under 12" change - change work
Impossible to meet Jan 19
therefore without this agreement.
Hwy-D.K. as a request from STEC
and a service to community but
we must insist that the
pole actually be changed in
a reasonable time*

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from the original bound volume

Q A T U

The Commission asked me to call
Mr. Wilson (C.O.) first thing tomorrow
morning & the or someone from our
side would lead with ITC,
as to the person to determine actual
company largest, He asked that
the Commission give consideration
as to how we could begin
transfer some power to ITC
to solve ITC problems and
get some results over time
and progress.

4/3 Wilson called me

① Can we provide WPTU in
our spare frequency (on 100.1 MHz)
until ITC change change over
Impossible to meet June 19
transition without this arrangement
R.N. - O.K. on a request from ITC
and a service to community but
we must insist that the
people actually be changed in
a reasonable time.

BEST COPY

from the original

(2) Will we still own master
pieces for ITC.

Ans - No, however, we
will consider special
cases subject to Gen Tel's
approval such as:

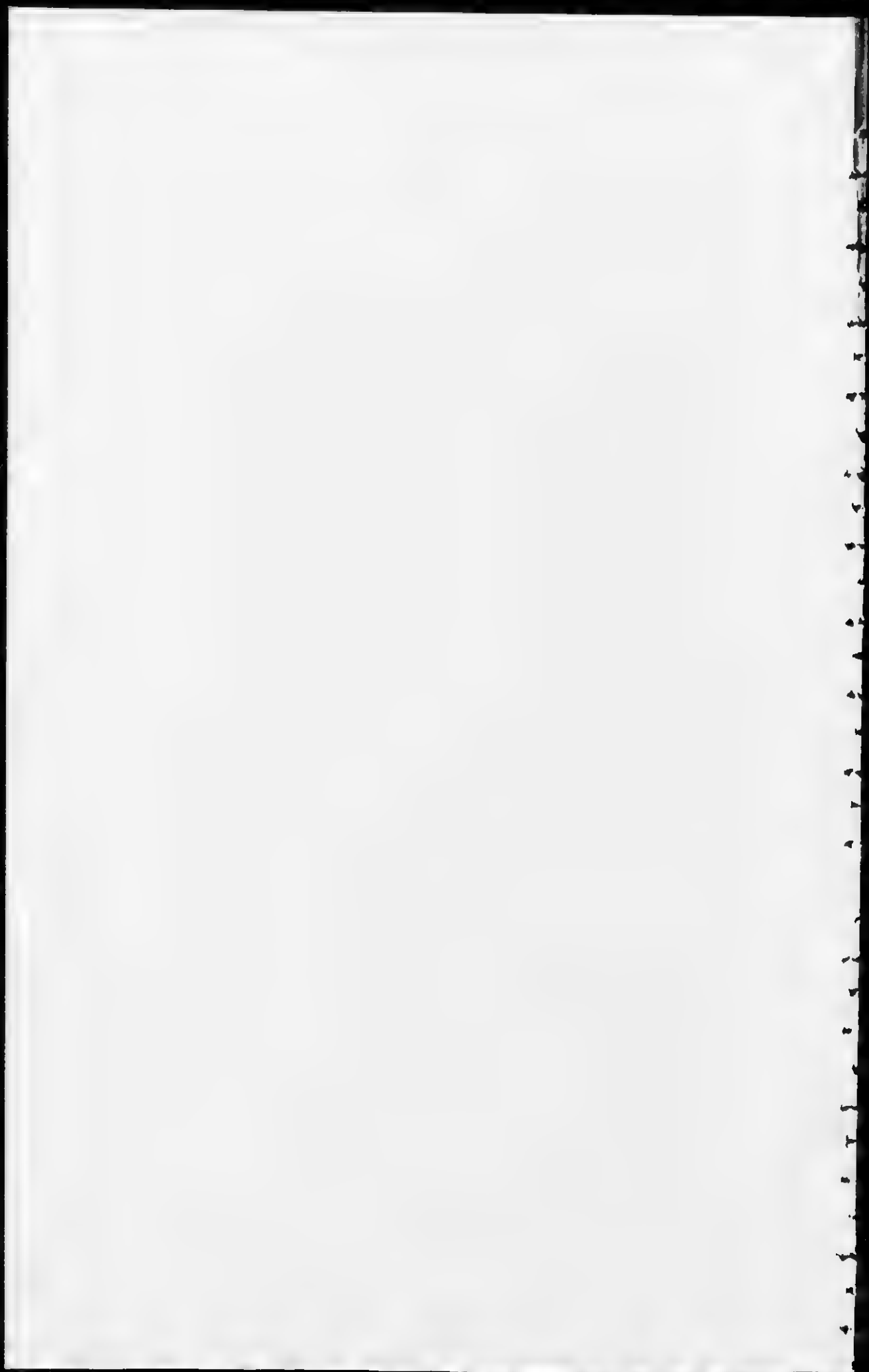
1. ITC transformer ~~pieces~~
located on pole

2. Where ITC owner will build
a new line in a particular
local, ITC requests for
their convenience and
will not require them in
structural ITC - Gen Tel
benefit and we do not
require ownership. Will
not sell only for GTC
convenience.

3. Not Commit on Gen Tel but make
necessary notes to resolve.

(3) Will we bill for rearranging
wires now presently are in conflict.
Ans - Depends on particular case.

E R



TeleCable Exhibit 57

GT&E SERVICE CORPORATION

730 THIRD AVENUE, NEW YORK, N.Y. 10017

May 10, 1965

TO: OFFICERS OF PARENT COMPANY AND SUBSIDIARIES

SUBJECT: ORGANIZATION ANNOUNCEMENT (NOT FOR EXTER-
NAL RELEASE)

Gentlemen:

Formation of a new corporate subsidiary to provide community antenna television (CATV) and related services to business and residential customers has been undertaken by General Telephone & Electronics Corporation.

The new organization, incorporated in Delaware, will be known as GT&E Communications Inc.

Officers are James J. Clerkin, Jr., President; George H. Gage, Vice President; H. H. Howlett, Secretary; and Ralph D. Heusel, Treasurer. Directors are Donald C. Power, Leslie H. Warner, James J. Clerkin, Jr., Theodore F. Brophy, and John J. Douglas.

GT&E Communications Inc. will provide CATV and other related services under arrangements varying with local conditions in communities throughout the country, extending GT&E services and capabilities further into the communications field.

Sincerely,

/s/ JAMES J. CLERKIN, JR.

James J. Clerkin, Jr.

Executive Vice President—

Telephone Operations

Copies to:

Department Heads of
GT&E Service Corporation

TeleCable Exhibit 58

GT&E SERVICE CORPORATION
730 THIRD AVENUE, NEW YORK, N.Y. 10017

May 18, 1965

TO: ALL GENERAL TELEPHONE OPERATING COMPANY
PRESIDENTS

SUBJECT: Marketing—CATV

Gentlemen:

Mr. Clerkin's organizational announcements of May 10 and May 12 gave the broad details of the establishment of GT&E Communications Inc. This letter is to inform you of future CATV developments and to provide you with our recommended initial courses of action concerning this service.

The Service Corporation is in the process of preparing a "CATV Marketing Guide". The Guide will contain recommended procedures for all interested departments for determining potential CATV locations, estimated market potentials, and determining facilities requirements. The Guide and its supporting material should be issued within the next few weeks. In the interim period we request that your company provide Mr. W. F. Stewart, General Manager of GT&EC Inc., 730 Third Avenue, New York, N.Y., available details of any CATV inquiries which have come to your company. All possible information concerning a CATV inquiry should be provided to Mr. Stewart before your company conducts any discussions or negotiations concerning the provisions of CATV service.

We are confident that the issuance of the "CATV Marketing Guide" and its collateral material will enable the System Operating Companies to efficiently approach the marketing of CATV facilities.

Please contact us if you have any questions or comments on this matter.

Very truly yours,

/s/ GEORGE H. GAGE

George H. Gage

Vice President

Telephone Operations Staff

GHG:LDA:ck

cc: J.J. Clerkin, Jr.

T.F. Brophy

G.W. Griffin, Jr.

W.R. Jarmon

G.P. Norton

D.H. Deaver

W.F. Stewart

All Service Corporation Directors

Excerpts From TeleCable Exhibit 59

THE MARKET

[7] *Justification for CATV*

The first CATV systems were in locations which were remote from the big cities where the TV stations were located. These locations, mostly smaller cities and semi-rural areas, were unable to get good television reception for a variety of reasons—too far from the stations to pick up the signals without expensive antennas, within the range of only one or two stations, prevented by geographical problems from receiving good reception, etc. CATV evolved as a means of providing good reception for these fringe areas.

Present CATV Statistics

CATV is of fairly recent origin, dating back only to 1949. The first CATV system was installed in Astoria, Oregon.

From that small beginning 16 years ago, the service has grown to these dimensions:

Number of Systems—As of the end of 1964, there were 1,600 CATV systems in operation.

Number of Customers—The CATV systems, as of late 1964, served about 1,700,000 customers.

Gross Revenues—As of late 1964, the CATV industry's estimated billing approximated \$80 to \$100 million annually.

General System CATV Statistics

CATV is fairly heavily developed in the areas served by the General System operating companies. The Appendix to this Guide contains a list by operating company of the locations where there are CATV systems in service, systems franchised but not yet in service, and where franchise applications are pending. This information, compiled from the *Television Factbook*, is as of February 10, 1965. Because of the rapid growth and change in CATV, many additional systems have probably been added in General System areas.

From the information contained in the Appendix, certain observations can be made about CATV development in General System areas:

- [8] 1. Every operating company has CATV systems in service in its area. The number varies widely, though, from the one in the Midwest, Florida and Upstate Companies, to the 36 in the Southwest Company.
2. Five System companies, as of February, 1965 had no situation in their areas where CATV franchises were granted but not yet in service.
3. Twelve companies served areas where CATV applications were pending, often by several groups in each area.

4. In total, there were 196 CATV systems in the areas served by the System companies. An additional 54 areas had franchises granted but not in service, and 31 areas had pending applications. Those 3 categories represented 281 communities served by General Systems operating companies.

Changes and Current Growth in the CATV Industry

CATV is one of the most dynamic and rapidly changing industries in America. The statistics previously given on the present status of CATV do not tell the full story of the growth and change occurring within the industry. Some of the most important developments concerning CATV today are:

Growth in Systems—An average of 10 systems per month are being put into service. New CATV systems are being sought or authorized at the rate of one per day. In the 15 month period since December, 1963, more than 1,000 communities have received applications for, or granted rights for, CATV systems. At the end of 1964, 700 communities were entertaining CATV proposals.

Growth in Customers—More than 15,000 customers monthly or 180,000 annually, are being added by the CATV systems.

Growth in Revenues—At an average figure of \$60, the 180,000 new CATV customers represent an additional \$11 million in annual revenues.

Increase in CATV Services—The first CATV systems offered only a limited number of TV channels to their customers. More recently, the CATV systems have been offering up to 12 TV channels and such other services as FM service and

• • • • •

[11] CATV IMPLEMENTATION PROGRAM**[12] CATV IMPLEMENTATION PROGRAM**

This section of the Guide presents the recommended program for the System operating companies to follow in providing CATV facilities. The role of the operating companies will be in determining CATV potentials and then in providing the CATV distribution facilities on a filed tariff basis. They will not provide CATV service directly to residences and businesses and will not become involved in the discussions and negotiations with the various communities as to franchises and other matters relative to the provision of CATV.

The GT&E Service Corporation will have a major role in assisting the operating companies in marketing CATV distribution facilities. The Service Corporation will provide the guideline material, such as this Guide, and will assist the companies in performing their specific duties.

The CATV Program will be presented in the recommended order of accomplishment. In some instances, only the broad outline of a particular step will be included in the Guide and reference will be made to the specific supporting material which will be issued for that step.

The General System CATV Program will be conducted in the following steps:

- I Filing of CATV Distribution Facilities Tariffs
- II Determination of Potential CATV Locations for Active Marketing Effort
- III Determination of Background and Market Information for Each Potential CATV Location
- IV Designing of Telephone Company Portions of Most Attractive Potential Locations

V Notification to GT&E Service Corporation of Most Attractive Potential Locations

VI Provision of the Required Distribution Facilities

The following material in this section of the Guide expands in detail on each of the above items:

I Filing of CATV Distribution Facilities Tariffs

A necessary prerequisite for the provision of CATV facilities by the System operating companies is the existence of tariffs for the available CATV services. Some of the System companies have filed tariffs covering these items of service. Those companies which do not have CATV tariffs at the time of the issuance of this Guide are urged to file these rates as soon as possible. The Service Corporation Commercial

* * * * *

[20]

Market Information

Total population in the study CATV area

Total number of households in the study area

See Supplement A in the Appendix for guidance in determining the geographical limits of each CATV study area.

Approximate square miles in proposed service area

IV Designing of Telephone Company Portions of Most Attractive Potential Locations

The next step in implementing CATV should be the designing of the telephone company portion of the systems needed to serve the proposed locations. At this point, the System operating company will have obtained fairly reliable information as to the areas with the greatest CATV potential. Only those that are considered to have the best potential should be taken to the point of actually designing the physical characteristics of the CATV distribution system.

The System operating companies will complete the initial designs of the CATV distribution facilities, for those locations which the companies feel have a definite CATV potential. The design will include the distribution facilities, drop facilities and any other telephone company-provided CATV facilities.

The individual company Engineering Departments will design the CATV distribution facilities. Material specifications and costs, design parameters, etc. relating to CATV system designs have been provided to the operating companies by the Service Corporation Engineering Director.

This design stage should not be exhaustive or all-encompassing. It should, rather, be of a general nature, sufficient to determine the approximate miles of plant and other related equipment but not of the detailed nature necessary to actually install the equipment. This determination need be only sufficiently detailed to provide a price quotation for leased facilities.

V Notification to GT&E Service Corporation of Most Attractive Potential Locations

At this point the operating company will have determined the communities

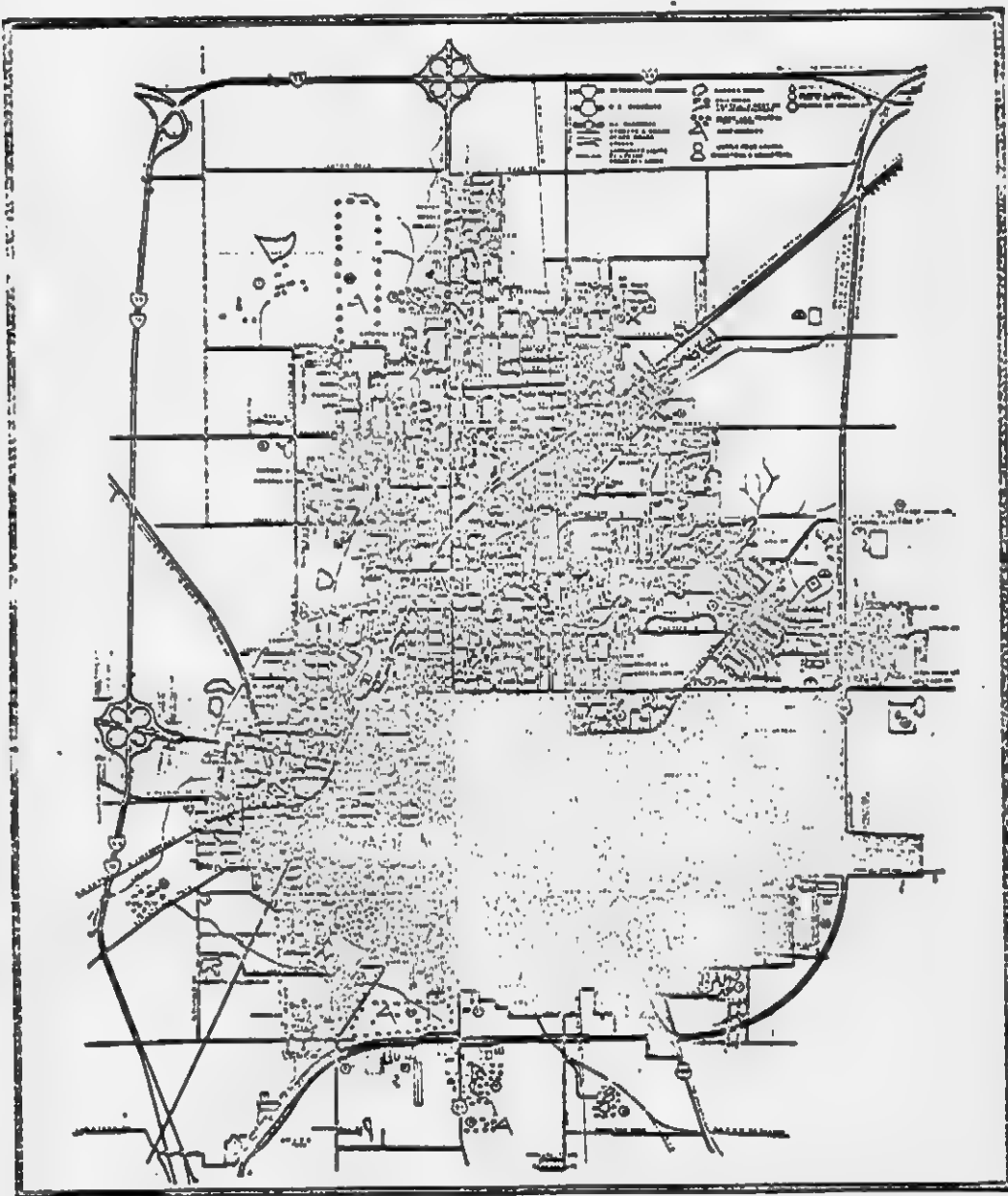
• • • • •

GTI Welcomes General System CATV

ILLINOIS GENERAL **NEW**

OCTOBER 11, 1968

GENERAL TELEPHONE COMPANY OF ILL.



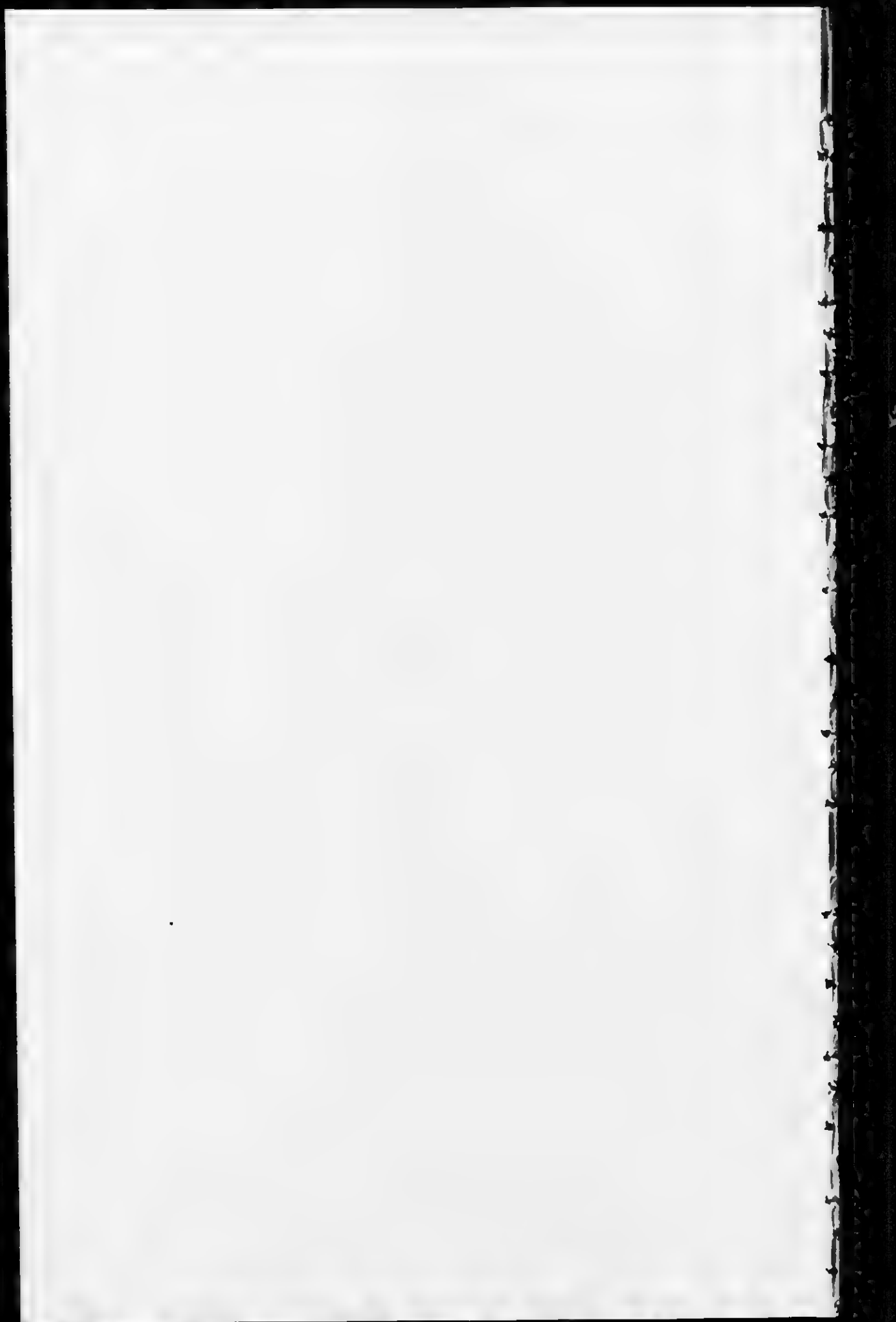
CATV CONSTRUCTION PLAN REVEALED

General Telephone & Electronics Communications (G-TEC), cable television operating subsidiary of GT&E, issued this map as part of the documents submitted with its bid to obtain CATV franchises for Bloomington and Normal. G-TEC's bid won. The franchise became effective September 30. Under the terms

of the agreement, the System must be fully operational within 540 days. Phase I of the four-phase construction plan will be finished by June 27, 1969. Phases II-IV will be completed, in order, in subsequent intervals. Customers will be provided service as construction progresses.

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Excerpts From TeleCable Exhibit 65**[1] GT&E COMMUNICATIONS INC.**

GT&E Communications Inc. was chartered in May 1965 to broaden the corporation's capabilities for providing all of the communications requirements of its customers. GTEC's primary business scope is to create this capability in communications fields not now covered by the Systems' various organizations. These fields include Cable Television, private networks utilized for microwave transmission, educational TV transmission, data transmission and other applications of closed circuit transmission.

There is little doubt that the future will require that GT&E have the capability for pursuing all possible communications markets. GTEC is the GT&E corporate vehicle that was created for accomplishing this end. The GTEC officers are: Mr. Clerkin, President; Mr. Gage, Vice President; and Mr. Stewart, Vice President and General Manager. The Board of Directors consists of: Mr. Warner, Mr. Douglas, Mr. Brophy and Mr. Clerkin.

GT&E Entry Into CATV

GTEC's entry into various markets has been on a planned basis. The first venture, and the one continually pursued since GTEC's inception, is Cable Television. Cable TV is one of the most widely discussed controversial, fastest growing industries in the American economy today. For these reasons, it was decided to strike here first.

• • • • •

**[14] BLOOMINGTON/NORMAL, ILLINOIS
CABLE TV MARKET CHARACTERISTICS**

In examining the factors that create a market for Cable TV service and the proposed Cable TV offering, the reasons for providing Cable TV service to Bloomington/Normal soon become evident.

Present "Off-Air" Reception

Off-the-air reception of acceptable quality in these cities is confined to three UHF and one VHF channel:

Channel 19—Peoria—WTVH—ABC affiliate station
 Channel 25—Peoria—WEEK—NBC affiliate station
 Channel 31—Peoria—WMDB—CBS affiliate station
 Channel 3—Champaign—WCIA—CBS affiliate station

Thus, present TV communications is limited to that which these four stations wish to provide. In McLean County alone these four stations control the video inputs of more than 25,500 TV homes.

In January of 1968 there were approximately 4,000 color TV sets in Bloomington/Normal metropolitan area homes. In addition, 17% of the households have more than one TV set. This major investment on the part of the consumer creates a desire on his part to utilize that instrument to its utmost capability.

Limited off-the-air reception, lack of programming selection, size of the color TV and multiple ownership market. These are the principal factors that create a market for Cable TV in Bloomington/Normal, Illinois.

[15] Proposed Cable TV Offerings

GT&E Communications Inc. proposes to provide the twin cities with first grade television signals from ten (10) broadcast channels, plus a local program origination channel for a total of eleven (11) TV channels initially. FM music and other important services designed to benefit the community are also proposed.

TV Channels

The initial installation will provide the following stations, selected on the basis of local interest and maximum program variety.

<i>Channel</i>	<i>Community</i>	<i>Call Letters</i>	<i>Network</i>
19	Peoria, Illinois	WIRL	ABC
25	Peoria, Illinois	WEEK	NBC
31	Peoria, Illinois	WMBD	CBS
3	Champaign, Illinois	WCIA	CBS
33	Champaign, Illinois	WCHU	NBC
12	Urbana, Illinois	WILL	EDUC.
17	Decatur, Illinois	WTVF	ABC
20	Springfield, Illinois	WICS	NBC
9	Chicago, Illinois	WGN	IND.
32	Chicago, Illinois	WFLD	IND.

Microwave

To insure that all channels will be received at maximum signal strength, it will be necessary to provide these two proposed broadcast channels to the community by microwave:

WGN	Chicago, Illinois	Independent
WFLD	Chicago, Illinois	Independent

These broadcast channels will be provided to the community contingent upon approval by the Federal Communications Commission.

[16] *Program Origination Channel*

A channel for the origination of public service programs will be included. This channel will continuously show such information as time, wind, velocity and direction, barometric pressure, rainfall and temperature. Background music and news will also be provided continuously on this channel.

FM Music Service

FM music for your listening enjoyment will be provided. The most popular FM stations in the area will be included in the system. Cable TV customers whose homes are

equipped with FM receivers will be able to receive FM programs without the need for an outside antenna.

Emergency Alert System

The proposed Cable TV system will include an Emergency Alert feature. The Emergency Alert feature will provide community officials an immediate means of alerting all Cable TV viewers to an emergency condition. Both voice and video messages can be broadcast simultaneously.

Cable TV Sales Potential

The projected customer saturation levels over a five-year period in Bloomington/Normal are as follows:

At turn-on—10% saturation with 1,875 customers				
End of Year 1—17%	"	"	3,230	"
" " 2—23%	"	"	4,428	"
" " 3—28%	"	"	5,460	"
" " 4—33%	"	"	6,518	"
" " 5—38%	"	"	7,600	"

[17] REVENUE AND OPERATIONAL RELATIONSHIPS

As indicated earlier General System participation in the growing Cable TV business is not limited to GTEC. Whenever Cable TV service is proposed for a community within a system telephone company's serving area, that company is in the best position to provide the bulk of the Cable TV system plant.

For example, a typical system has seven basic components:

1. The land
2. The tower and antennas
3. Head end building
4. Head end equipment
5. Distribution and feeder cables (coaxial)
6. House drops
7. Inside wiring

With their strong background in furnishing communications facilities, the telephone companies can provide the coaxial cable for distributing the signals, and the drops, from the cables to the terminal blocks.

On the other hand, GTEC or any other Cable TV company, can at its option provide the full components of the physical systems. And the fact is they do exercise this option. A Cable TV company can take any one of three options [18] available to it:

1. Wholly-owned system (separate poles)
2. Pole attachment (joint pole)
3. Broadband services offering

It's hard to tell *which* of the three approaches a company will decide upon. There is *no* standard. However, to date Cable TV operators have not welcomed broadband services offerings from telephone companies with open arms.

Here is a picture of the revenues, which the General Telephone Company of Illinois might expect (in Bloomington/Normal) from each approach:

1. Wholly-owned Cable TV system (separate poles)
\$ None
2. Joint pole (pole attachment)—
Average \$25,000 annual revenues
3. Broadband services offering—
\$158,000/year estimated annual telephone company revenues in the fifth year.

Again, it must be emphasized—any direction is possible—General Telephone of Illinois has no assurances of obtaining the distribution system from Cable TV operators. The revenue potentials are questionable. The market is competitive.

On the other hand, if GTEC is awarded the franchise for Bloomington/Normal, Illinois, General Telephone Company

of Illinois will provide the distribution [19] facilities for the system, and will realize in excess of \$158,000 in annual revenues in the fifth year. In looking at all of the General Telephone major market target cities, GT&E telephone operations could realize \$2.5 million in revenues annually from distribution systems created by GTEC's activity.

Automatic Electric Purchases by GTEC

In 1966 GTEC purchased through Automatic Electric, and other GT&E subsidiaries, approximately \$1,200,000 of Cable TV electronics. During 1967 these purchases exceeded \$1.5 million. Thus, the economics of the Cable TV industry expansion into General Telephone operating areas are certainly in favor of the combined resources of the GT&E operation companies and GTEC.

Operational Relationships With Cable TV Companies

Operational relationships can be a problem area when dealing with private Cable TV entrepreneurs. The private system owner typically knows very little about telephone plant, construction, and operations. He may have little familiarity with the substantial amounts of planning and control required for the success of *any* Cable TV endeavor. Here again, GTEC has the advantage of being staffed with competent, well-trained employees. Its engineers have many years of experience in the CATV industry.

Revenues and operational efficiency play an important role in the continued success of General Telephone and Electronics Corporation. Singly, they do not insure success, but together they cannot but mean success. GTEC, in [20] its Cable TV activities, can offer a package of revenues, and efficiently coordinated operations to the General Telephone Companies.

[21] GTEC APPROACH TO MAJOR MARKETS

A Cable TV system requires expert and experienced guidance through every phase of its development. This is never more important than at the time when an investor decides to study, and approach, a city for a Cable TV franchise. Franchises today are almost always awarded under competitive situations, sometimes with as many as 12 bidders. As such, franchise activity must be conducted with the highest level of aggressiveness and thoroughness.

The GTEC approach to the major Cable TV markets can be illustrated by examining the steps taken for evaluating Bloomington/Normal, Illinois, and the actions that will be necessary to bring the endeavor to a successful conclusion—the franchise award.

Market Analysis

The first step was market research. This took the form of prospecting and feasibility studies. Much meaningful information was obtained from General Telephone Company of Illinois—regular inputs of news clippings and area economic data. In addition, GTEC Marketing personnel from our Eastern Region Office obtained other information to allow us to determine whether or not the franchise was worth pursuing.

In its final form—the feasibility study took into account such factors as:

- Population—size and growth trends
- Households—numbers, new start trends and types
- [22] —Market growth—vertical and horizontal
- Economics—present status and future outlook
- Market potential
- Percent stations received
 - a. quality
 - b. network affiliation
- Stations available for Cable TV service
- FCC limitations

Once all available data on Bloomington/Normal was obtained a dwelling and saturation projection was prepared. This projection was based upon the assumption that GTEC was awarded the franchise. Assuming this, the following data was projected over a minimum of five (5) years:

- Population
- Dwelling units
- Cable miles required
- % saturation
- Customers

[23] *Engineering Analysis*

The next step was the engineering evaluation. In the "first look" stage, this evaluation involved the important task of an on-site signal survey, using a helicopter. Basically, this involves a survey of the TV signals that would be available to be received and transmitted via the coaxial cable. Taken into consideration in this step was:

- Transmitter location
- Signal strength
- Off-the-air or microwave recommendation

Financial Analysis

From the information that had been gathered, the next step—the financial analysis—was developed. This analysis in its final form indicated the level of return on invested capital, and thus the financial feasibility of pursuing the franchise for Bloomington/Normal. A few of the factors that went into this analysis were:

- Subscriber rate
- Dwelling units passed and growth
- Saturation attainable and timing
- Cable miles required and rate

Formal Proposal

At that point, having completed the evaluation, and most importantly, having reached the decision to seek the Cable

TV franchise for Bloomington/Normal, Illinois, the next step would be to inform the City of our desire for the franchise. This would take the form of a letter of intent. For all intents [24] and purposes this letter would be GTEC's first contact with the City officials. A process of events would then be set in motion to set the stage for an official hearing on GTEC's proposal for Cable TV service to the City. The folder included with this documents is that proposal in its final printed form. In the proposal is an accumulation of information that was designed to answer five (5) Basic questions:

1. What is a Cable TV system?
2. Who is GTEC and what are their resources?
3. What is GTEC proposing?
4. How will it be accomplished?
5. What are the proposed city revenues?

In addition, the printed proposal will be accompanied by a verbal/visual presentation. This has the advantage of allowing for a question and answer session, as well as the advantage of being able to place emphasis where it is needed.

[25]

SUGGESTED ACTION STEPS—

BLOOMINGTON/NORMAL, ILLINOIS

GTEC's activity up to this time has been primarily accumulation and evaluation. It will be the activities beyond this point that will determine the success or failure of the franchise effort in Bloomington/Normal, Illinois.

The Major Market Program, as has been indicated, has great revenue and service potentials for GT&E. It has been reviewed and approved by GT&E Service Corporation management and by Mr. Clerkin. From this point on the support and cooperation of General Telephone Company of Illinois will be critical in accomplishing our goal: the Cable TV franchise in Bloomington/Normal.

There are three (3) recommended action steps on the part of General Telephone Company of Illinois that will be necessary in attaining this goal.

1. A total commitment must be made to an intensive program aimed at assisting GTEC to obtain the Bloomington/Normal Cable TV franchise.

In this regard sufficient time, people and money must be allocated by General Telephone Company of Illinois to efficiently realize the program's goals. In general terms, the same resources should be directed to this program as would be committed to securing any other customer with a potential of in excess of \$158,000 in annual revenues to your company.

2. A comprehensive program should be developed to obtain intelligence as to the Cable TV situation in Bloomington/Normal. [26] Current information must be available if the necessary coordination steps are to be taken.

Information must be provided to GTEC on a continuing basis. Included here would be appropriate information on scheduling, facilities, other applicants, city government activity, etc.

3. An employee education program should be initiated in Bloomington/Normal to inform the General Telephone Company of Illinois employees as to Cable TV and GTEC's role in providing this service.

With your able assistance, the Bloomington/Normal Cable TV franchise award can be obtained. Anything short of an aggressive and intensive program by GTEC and General Telephone Company of Illinois could result in losing this opportunity. The nature and size of the Bloomington/Normal Cable TV market, and the nature of the Cable TV industry, are such that a franchise will probably be awarded by the city in the not too distant future.

We Must Act Now

640 000

TELETYPE EXHIBIT 69

OL. ENL. HOATE

FOR FILING PURPOSES, CONFINE THIS MEMORANDUM TO ONE SUBJECT ONLY

PLACE

REPLY

DATA

It will be satisfactory to adjust CATV gross additions and revenues at the time of first review. Assuming no other change in our financial picture in the meantime, we should plan that we will be reducing telephone outside plant gross additions in an amount equal to the CATV additions.

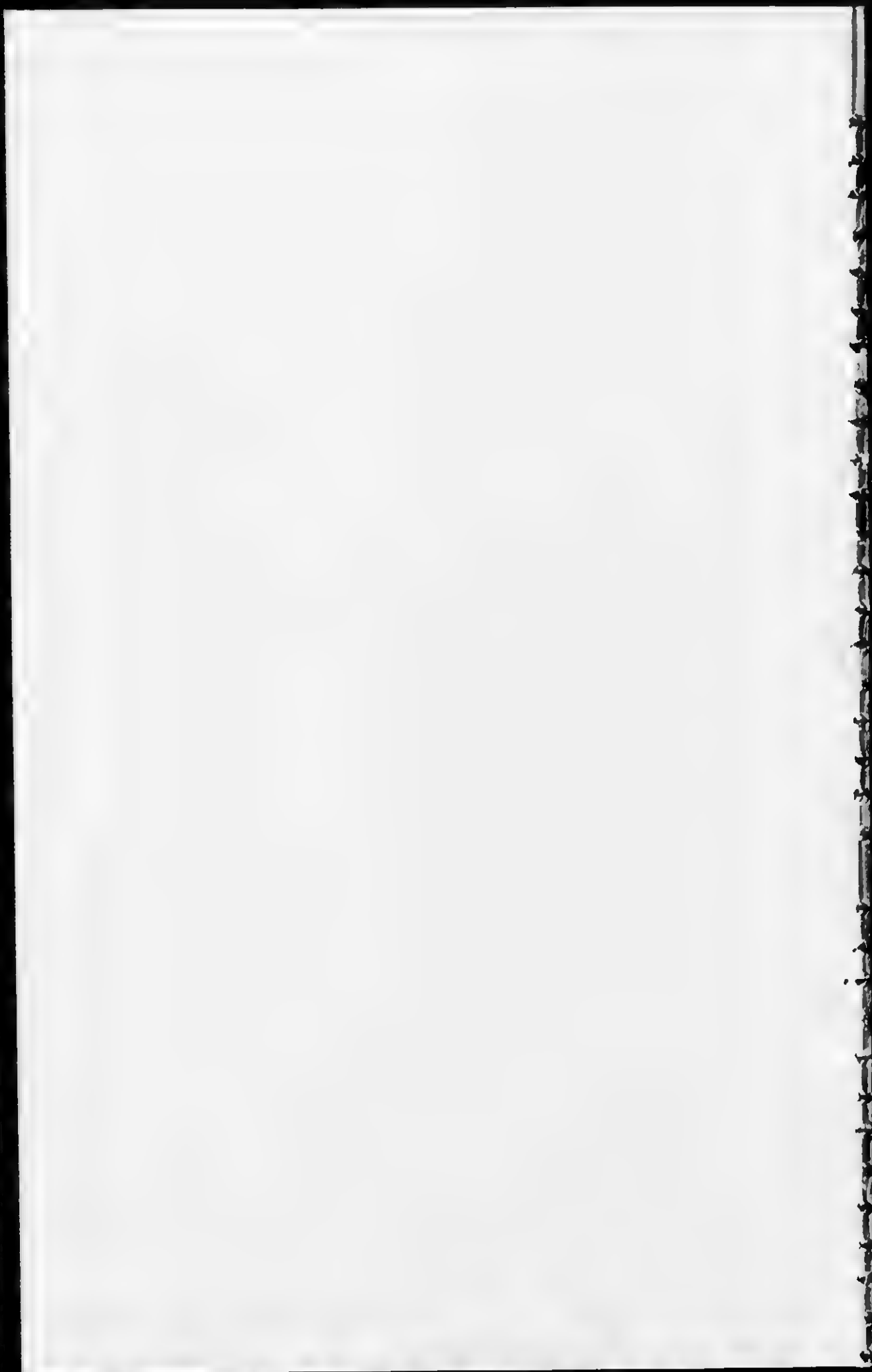
D. E. ANDERSON
Operating Vice President

225 HRS

SIGNED

RETURN THIS COPY TO SENDER

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from the original bound volume



Excerpts From TeleCable Exhibit 76

GENERAL TELEPHONE COMPANY
OF ILLINOIS
1312 EAST EMPIRE STREET
BLOOMINGTON, ILLINOIS 61701

October 8, 1968

Mr. L. E. Thomas
Eastern Region Manager
GT&E Communications Inc.
Eastern Region Office
1504 Directors Row
Fort Wayne, Indiana 46808

Dear Lowell,

Attached for your review and signature are four (4) copies of a Service Order for the Bloomington-Normal CATV System.

It is hoped that the content of the Service Order meets with your approval and if there are any questions please feel free to contact this Office for clarification. If there are no questions, would you please execute all four (4) copies and return them to me for further handling.

Upon receiving the proper signatures from our Company, I will return two (2) copies to you for your files.

Very truly yours,

/s/ R. D. GRISWOLD
Marketing Director

Attachments (4)

TeleCable Exhibit 77

October 23, 1968

Mr. William C. Rowland, President
General Telephone Co. of Illinois
1312 East Empire Street
Bloomington, Illinois 61701

Dear Bill:

We recently received from Bob Griswold four (4) copies of your Service Order for the Bloomington/Normal distribution system. This material has been revised by our Legal staff and by each of the GTEC department heads. We have several suggested changes and additions to the Service Order and its attachments to more clearly spell out the services to be provided to us by General Telephone Company of Illinois.

Attached is one copy of your Service Order form. The following are our comments and questions on the form and attachments:

1. On Page 1, we suggest that the word "Telephone" be added before "Company" on Line 7, to clearly state that it is your FCC Wide Spectrum Tariff which is being described.

2. On Page 2, Section 3, there is space for inserting a quantity of Sheath miles of distribution facilities. Since General Telephone Company of Illinois is doing the engineering for the distribution system, we request that this quantity be inserted by your company on the form before we sign it.

3. Also in Section 3, Page 2, frequency ranges of 5 ± 108 MHZ and 7 ± 216 MHZ are given. The 216 MHZ limit will permit only 12 channels to be provided to us. We suggest that a lower limit of 50 MHZ and an upper limit of 270 MHZ be inserted instead, to

allow your company to provide us up to 20 channels of TV signals. We will require 12 channels for the initial system, but would like to have the capability of obtaining up to 20 channels in the future without having to write another Service Order.

4. The Service Order does not give any indication of the charges which would apply to us for the number of Sheath miles listed in Section 3. We would like to have included in Section 3 the minimum billing which we will pay for the initial service to be provided to us in accordance with the Areas 1-4 specified in your map.

5. On Section 5, Page 3, we have revised the wording to reflect our System Specifications. These specifications (attached Sections A through E) have been submitted to the Service Corporation and concurred in as being an appropriate set of guidelines for both the CATV Company and the Telephone Company to follow.

6. On Section 9, Page 4, we suggest that the phrase "or FCC No. 1" be added to the end of Line 3 to indicate the reference to the FCC Wide Spectrum Tariff.

With the above changes to your Service Order and attachments, we will be happy to sign the required four copies. Please contact me if you have any questions about our proposed changes to the Service Order for the Bloomington/Normal CATV distribution system.

Very truly yours,

Wenton F. Stewart

WFS:bc

Attachment

cc: Mr. L. E. Thomas

Excerpts From TeleCable Exhibit 81

[2] telephone company poles in the communities. Bill referred me to Dave Anderson, the operating Vice President. In subsequent conversations with Dave Anderson and Leroy Cox, Chief Engineer, I learned that they did not have pole location prints that would be available to us. I learned in my conversations with Mr. Anderson and Mr. Cox that they have not completed any electronics engineering. They indicated that their supplier would perform this function for them.

Illinois Power Company's Engineering Department was contacted and they offered to provide us with copies of their pole location prints for our construction phases 1 and 2. They indicated that they did not have such prints for our phases 3 and 4. I suspect that they are reluctant to provide us with too much information until we negotiate the pole license agreement with them. Based on an extremely hurried count of the poles indicated on the power company prints, we found the following:

Area	No. of Poles Telco Power Co.		% Ownershtp Telco Power Co.	
Phase 1 and 2, Normal	1157	3027	28%	72%
Phase 1 and 2, Bloomington	390	1400	22%	78%
Phase 1 and 2, TOTAL	<u>1547</u>	<u>4427</u>	<u>26%</u>	<u>74%</u>

As you can see from the above, there is a conflict in the information estimated by Mr. Wetzel of Illinois Power and the count that was made from their prints. The best explanation that I can offer is that while the joint-use poles (those used by both Illinois Power and General Telephone) have been equalized, there remains a greater percentage of poles * * *.

TeleCable Exhibit 84

April 10, 1969

File: P-Lines 1-2

MEMORANDUM

To: Mr. V. C. Maulson

Subject: Illinois Power Company-General Telephone Company of Illinois Joint Pole Use Agreement

March, 1971 is the committed date to balance the ownership of poles by sale of poles by IPC to GTI. It is obvious that many of the poles that IPC will rent to G-TEC for CATV attachments will be purchased by GTI. In many cases, the temporary work will not have been completed when the change in ownership occurs.

I am assuming the following will occur:

1. G-TEC will pay rent in accordance with their contract with IPC to GTI.

2. GTI will make the corrections, where temporary work was done in accordance with previous agreed plans and G-TEC would pay for these corrections.

GTI plans to buy approximately 1500 poles, 400 of which are already in process, in order to balance ownership which is an indication of the magnitude.

We would appreciate your comments and guidance in this matter.

Attached is a copy of the pole license agreement between IPC and G-TEC.

/s/ C. L. Cox
C. L. Cox
Chief Engineer

CLC SJM
Attachment
CC: D. E. Anderson

TeleCable Exhibit 85

File: P-Lines 1-2

(IPC)

April 24, 1968

MEMORANDUM

To. Mr. D. E. Anderson

Subject: Agreements—Joint Used Poles

We have checked with the Illinois Power Company to get their interpretation of Article 21 of our General Joint Pole Use Agreement covering rights of other parties on poles owned by General Telephone or Illinois Power Company.

Illinois Power Company agrees that Article 21 can be read to mean that General Telephone Company has priority rights on Illinois Power Company poles and Illinois Power Company will give us a chance to reserve existing poles prior to CATV occupancy. However, Illinois Power Company would expect us to be reasonable and not reserve space on poles which we do not intend to use.

C. L. Cox
Chief Engineer

CLC TWW SJM

TeleCable Exhibit 86

Mr. R. E. Prather

April 15, 1969

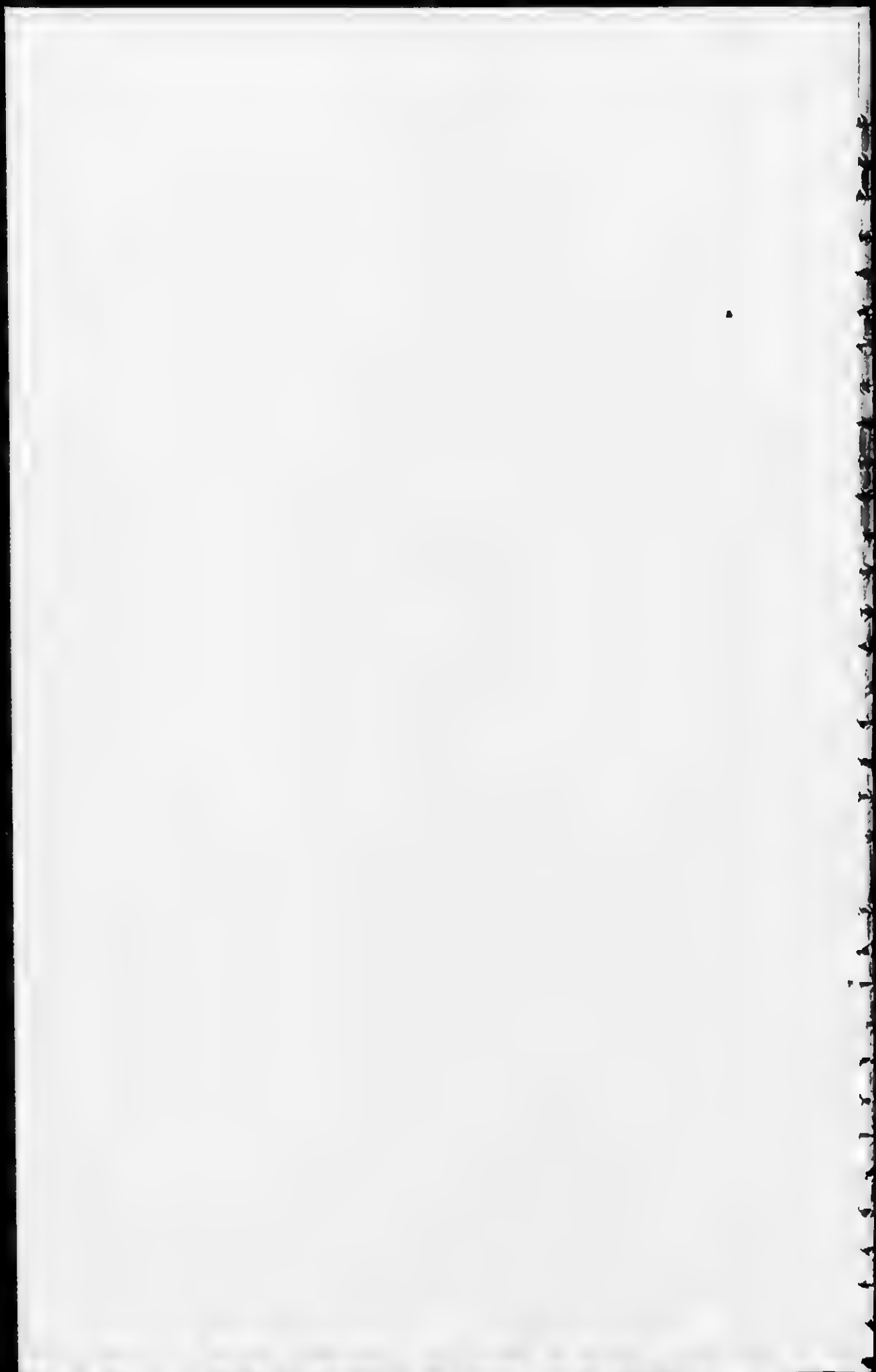
Engineering—Pole Contacts

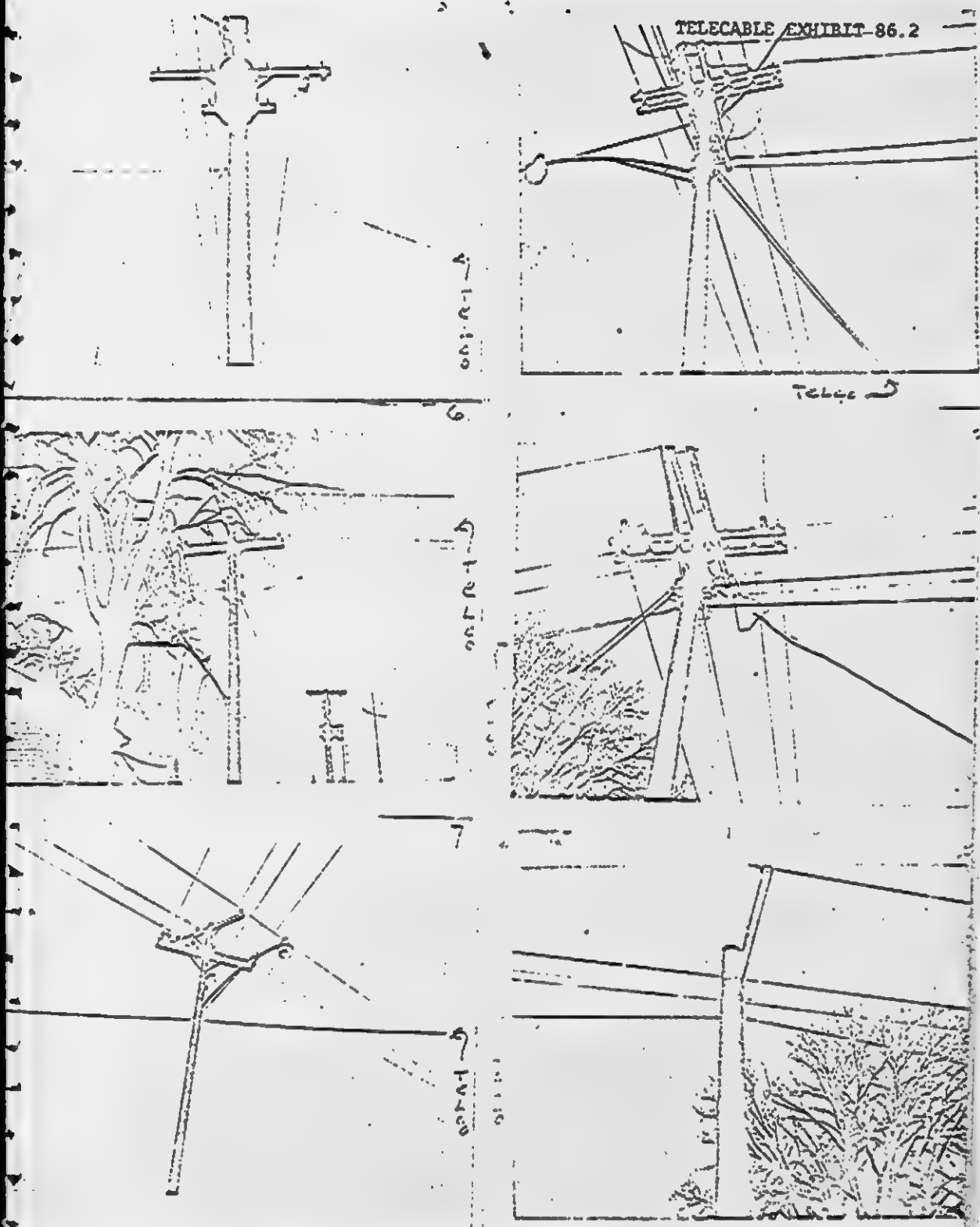
From the point where our trunk cable changes from buried to aerial to the G. M. & O. rail crossing on West Washington Street, there are 45 poles owned by Illinois Power Company. The Telephone Company is presently contacting 16 of these 45 poles. Telephone Company infractions of the minimum separation between their plant and the Power Company plant exists on 9 of the 16 joint-use poles. (See attached exhibits 1-9).

T. M. Mayers

TMM/skf

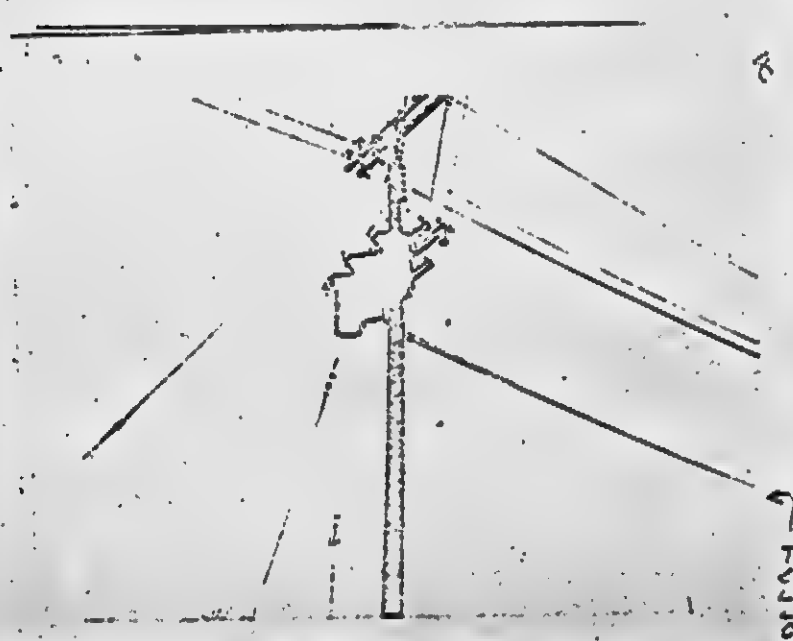
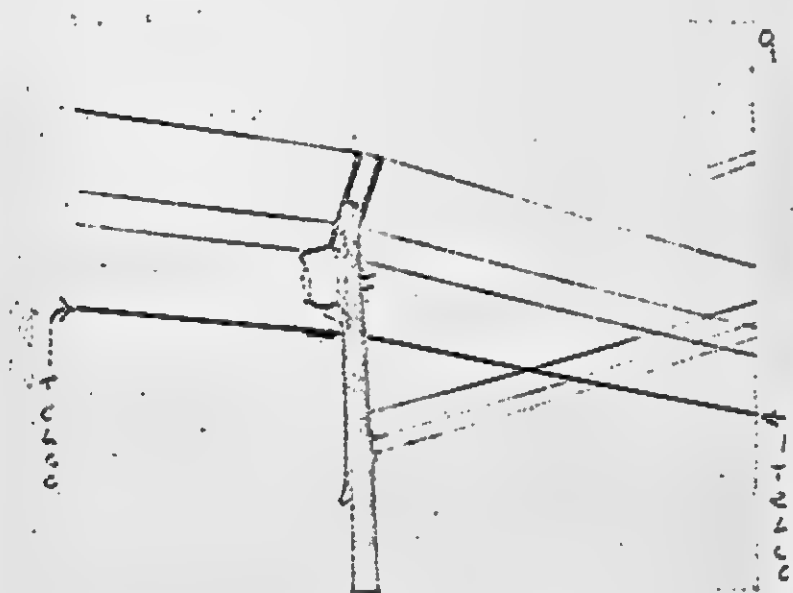
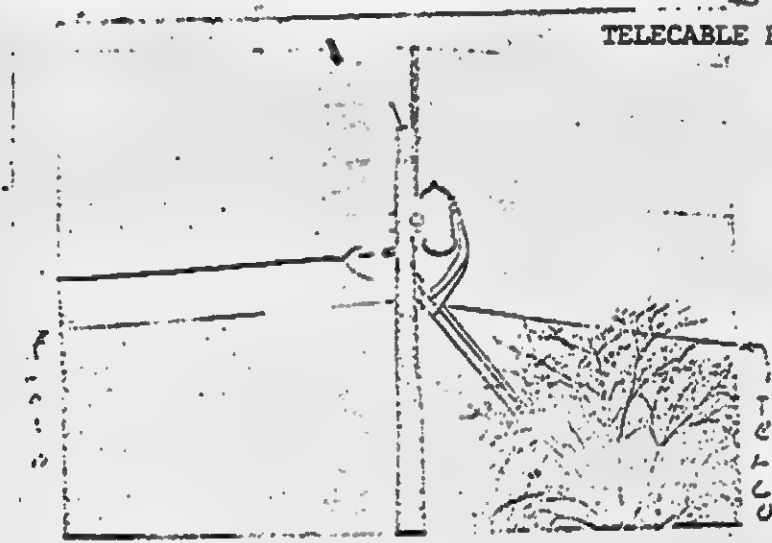
Attach.





BEST COPY AVAILABLE
from the original bound volume

TELECABLE EXHIBIT 86.3

**BEST COPY AVAILABLE**

from the original bound volume

TeleCable Exhibit 87

Form 153-36 (4-69)

POLE ATTACHMENT APPLICATION AND PERMIT

Permit No. 28

Date: May 22, 1969

ILLINOIS POWER COMPANY

In accordance with the terms and conditions of the agreement between our respective companies dated April 11, 1969, application is hereby requested for permission to make attachments to poles in the City of Normal as indicated on the sketch attached hereto.

By: /s/ T. M. MAYERS

G. T. & E Communications Inc.

PERMIT

Permission is hereby granted to make the attachments described in the above application subject to all terms and conditions referred to above and in said agreement, and further subject to acceptance by the applicant of the obligation to pay the actual cost (the estimated amount of which is shown below) of changes or rearrangements of poles or equipment as indicated below or on a statement attached hereto:

.....
.....

Estimated amount to be paid for above changes \$2551.90
Above charges accepted

ILLINOIS POWER COMPANY

By G. W. Wetzel

Date: 5-23-69

By: T. M. Mayers, *Manager*

Date: 5-26-69

INVENTORY

IPC Owned Poles TV Co. Contract Only	IPC Owned Poles Tel. Co. Joint TV Co. in Telephone Space	IPC Owned Pole Tel. Co. Joint TV Co. Not in Tel. Space
Poles in use to date	1172	1643
Poles added by this Permit	41	60
Total poles in use	1213	1703
Total Annual Rental		\$8089.25

TeleCable Exhibit 90

MEMORANDUM BY G T & E COMMUNICATIONS
INC. PREPARED FOR THE RESPECTIVE
MAYORS, COUNCIL MEMBERS, ATTORNEYS
AND ADMINISTRATORS OF THE TOWN OF
NORMAL AND THE CITY OF BLOOMINGTON

First, let us state that we concur wholeheartedly in the report of Mr. Jaeger, Normal Town Administrator, Mr. Fleming, Normal Town Council, Mr. McAllister, Bloomington City Manager, and Mr. DePew, Bloomington Corporate Counsel. We feel that these gentlemen spent much time and energy in their effort to see that only the best and most competent organization was recommended to receive the CATV franchises. We feel this way not just because we did receive their recommendation, but also because of the care and work which must have gone into the preparation of the two ordinances, Normal ordinance # 715 and Bloomington ordinance #1968-27. These ordinances contain many conditions which we as an applicant were not enthusiastic about, but they were a part of an ordinance which *we believed had to be complied with before our application would be considered*, and it was our opinion that if we were not to so comply, our application would be automatically rejected without even a second thought by your two fine councils. Now a joint meeting has been called

of the two councils as a result of the other two applicants' efforts to cloud the issues and not admit to the fact that neither one was willing to comply with the bidding requirements of the two respective ordinances. Only we were willing to post the \$200,000.00 performance bond to insure our most diligent effort to get all necessary F.C.C. approval and to, at the same time, insure that we would begin construction of the distribution system even while we might wait for F.C.C. approval on our long-distance stations applications.

We feel that we were recommended for the franchises for the following reasons:

- | | |
|--|---|
| Complied with Ordinances' Requirements | (1) Our bid complied with the ordinances' requirements in all respects. |
| Waiver of Charges | (2) We were willing to waive our installation charge for all orders received prior to the official inservice date for primary connections, and we have no installation charge for apartment houses. |
| Least Cost | (3) Although our monthly charge is higher than the others, the monthly charge for additional TV and FM connections is less, and we do offer a 10% discount for annual prepayment. (See Appendix A) |
| Preliminary Study | (4) We did make the necessary preliminary studies to comply with the bid requirements. |
| Financial Ability | (5) We do have the necessary financial backing that is required, and we would be ready to begin as soon as the franchise would be awarded. |

Local
Channel

(6) We are willing to carry any local channel whenever it should become available.

We feel that we must question some of the points raised by the other two applicants in their communications to the two councils dated August 15, 1968, and August 12, 1968.

Pole
Agreements

(1) The question of their liability City of Bloomington and Town of Normal was raised because they might have problems securing pole attachment agreements with the local utilities. We submit that your foresight in including Section 7d in the two ordinances acknowledges [2] Section 7d fully and adequately protects a franchisee from liability for this reason.

Ownership and
Reinvestment
of Earnings

(2) With regard to the point raised for local ownership and reinvestment of earnings in the communities, we submit that no applicant is locally owned, although all quite probably have some local ownership. Our parent company has several hundred shareholders in the Bloomington-Normal area and its stock is readily obtainable on a national stock exchange. One further point is that initially we would be investing considerable outside money into the Bloomington-Normal area.

Local
Supervision

(3) On the point of local supervision, any cable TV firm operating a successful CATV service in a community the size of Bloomington-Normal must have and maintain a very capable local management staff consisting of trained office and sales employees who live, work, and spend their wages in the community.

National
News

(4) National news is mentioned as a criteria and an indication was made that G T & E Communications Inc. would not offer any national news. This simply is not true as national news is a standard service on all TV and FM radio stations and a large number and variety of TV and FM channels is the very essence of cable TV service.

Chicago
Educational
Channel

(5) A Chicago educational channel (subject to F.C.C. approval) was proposed by Perfect Pictures but not by us, and this is true. However, we point out that one educational channel is already available in the area. Furthermore, we know of several situations where distant educational channels have not been allowed on a CATV system where a local educational channel is in existence.

Channel 33

(6) We apologize for listing Channel 33 as a station which we would carry. Since our original draft for our application, this channel has been redesignated as Channel 15 and we would carry this channel.

G T & E
Communications
Inc.

(7) Allegations have been made that G T & E Communications Inc. is General Telephone Company and that this bid was made by the General Telephone Company, and as such we would not have any long-term commitment to serve the Bloomington-Normal area with a CATV system. THIS IS NOT SO!

G T & E Communications Inc. is a subsidiary of General Telephone and Elec-

tronics Corporation as is also Sylvania Electric Products, the various General Telephone operating companies, and many other subsidiary companies both domestic and foreign. GT&E Communications Inc. exists for the primary purpose of owning and operating CATV systems across the country and at present operates in 37 towns in 9 different states. Secondly, GT&E Communications Inc. must negotiate with the local telephone company and/or the power company, and/or the public works departments of the two cities the same as any other applicant must do. We do contemplate using a telephone company broadband service as offered under their Tariff #1, Section 34 as filed with the I.C.C. and tentative arrangements have been made for a binding contract whenever we would be granted a franchise. We have no intention of obtaining a franchise and then selling it to another operator as has been true of many systems throughout the United States.

[3] Variety of
Channels

(8) Questions have been raised as to the variety of distant channels that our bid contained. We proposed a lineup of eleven broadcast channels initially plus time and weather and emergency alert. The specific channels were selected to provide the greatest amount of program variety. In doing so we propose to provide three NBC stations, two CBS stations, two ABC stations, three independent stations, and one education sta-

tion plus one channel of local time and weather and program origination. The twelve channels proposed represent the present capacity of a coaxial cable. As systems with greater capacity become available, we will certainly expand the system accordingly. We are also receptive to suggestions for other channels, recognizing that we would be required to carry seven out of the eleven broadcast channels we proposed. The maximum saturation of the Bloomington-Normal system will thus be realized when the proposed distant signals are provided. We recognize as do the councils that these signals will require F.C.C. approval which usually takes many months. We concurred, however, in the franchise ordinance which requires construction to begin before distant signals authority is received. We did so because we felt that we could successfully initiate the system by providing these benefits.

- A. Best quality reception especially in color for all of the signals which would be received off-air at our tall tower.
- B. A greater number of channels off-air than is now available to the residents.
- C. Desirable local information on the local channel.

These benefits will, we feel, enable us to become operational until such time as the F.C.C. approvals are obtained for long distance stations.

Local
Educational
Channel

(9) It is true that we do not offer a local free educational channel. However, our local origination channel could be used for this purpose by carrying local educational origination.

In summary we feel that the Normal Town Council and the Bloomington City Council should award a franchise to us because we:

Complied with the bidding requirements and thus submitted the only valid bid. The joint committee of the two communities and the consulting firm concluded that our bid was valid, good and reasonable. We will begin work immediately.

Permit us to make one last observation. Both communities have taken three years of conscientious, diligent study and have spent much time, effort and money to be at this stage for the granting of a CATV franchise. Therefore, if all of the bids are rejected so that the two bidders who chose not to comply with your bidding requirements may again submit their bids, then in three, six or nine months might you again have to reconsider all of the bids so that those who did not wish to comply with the law which you made may again ask that the law be rewritten to give them another chance?

TeleCable Exhibit 95

August 23, 1968

Memo to File

Subject: Bloomington-Normal Franchise

On Monday, August 19, I attended the Normal Town Council meeting together with David Davis Sr. and D.D., Jr. Item 9 on the agenda was "Ordinance—CATV franchise award."

When this item came up Mayor Baugh mentioned that some unfair publicity had arisen over the whole CATV matter, especially just before and following the special joint meeting with Bloomington on August 15, 1968. He requested a motion for council action. A motion was made to pass a resolution naming GT&E Communications Inc. as the CATV franchise grantee subject to Bloomington doing the same and preparation of the final franchise ordinance by the city attorney and acceptance of the terms of the franchise ordinance by the named grantee. The motion was seconded and comments from two councilmen followed.

Mr. Orr pointed out that a special joint meeting had been held as requested with the Bloomington council and all parties had been heard and that nothing had upset the joint recommendations of the city managers, attorneys and consulting firm.

Mr. Schroeder mentioned that much effort had been expended and some difficulties had been experienced to arrive at this point. He suggested that they should state publicly the reasons for the favored franchise. He pointed out that the magnitude of the construction project and the requirement to secure further approvals and permits would mean that considerable more time would elapse before customers could be connected to the new service. He further pointed out that G'TEC was the only one of the three bidders willing to start the "mechanical" aspects of providing the service at an early date. He concluded that there was "little over-all difference" in rates quoted by the 3 firms.

On a call for vote the motion was carried 5-0.

[2] A representative of radio station WIOK asked for a statement right after the vote was taken. Attached is a copy of the statement given to the station the following morning (8-20).

Our attorney, Mr. Davis was to determine how soon the franchise ordinance would be prepared and what pro-

visions it would contain. I called him from Macomb on 8/22/68 and learned that no action can be taken until after the Bloomington meeting on 8/26/68 and at such time as the two city attorneys can meet together to draw up the document. It will probably be the first week in September before this occurs.

Attached are clippings from *The Daily Pantagraph* covering the council proceedings relative to the CATV franchise from August 3 through August 20. Some of these articles are quite factual but it should be borne in mind that the Pantagraph was a party to one of the other bidders.

Clare Bristol

CB:ls

Attachment

[3] Statement Made to WIOK—8/20/68 CNB

We're very pleased with the action of the Normal Town Council last night in passing a resolution to award a franchise to GT&E Communications Inc. for construction and operation of a Cable TV system in the community. We look forward to similar action at the next meeting of the Bloomington Council.

Once both councils have given final approval to the Cable TV franchise award several other legal steps at the federal level must be taken before construction can get under way.

We estimate that construction on 140 miles of special coaxial cable will commence before the end of the year. A several hundred foot tower and antenna system and associated electronic building will be constructed early in 1969 and service should be available to approximately 30% of the Bloomington-Normal area by early summer next year.

Cable TV is really a master community antenna system capable of serving every TV set in the city. It does a better job than a home antenna because of its great height, its location away from sources of interference and special electronic equipment to stabilize the TV signals. The Bloomington-Normal system will rely on microwave relay to bring in Chicago channels once this is approved by the Federal Communications Commission.

All this means that Cable TV will bring stronger, more consistent and interference free signals to the customers TV set for more enjoyable and convenient TV viewing on more channels than ever before—and at the same time eliminating the need for a roof top or other home antenna.

Cable TV is a rapidly growing service industry in the United States reflecting the people's desire for quality TV pictures on a large number of channels. The growth of Cable TV is also linked with the increasing ownership of color sets which function better on the strong, stable signals provided by a Cable TV system.

GT&E Communications Inc. very much looks forward to serving the Bloomington-Normal area and becoming a much relied upon member of the community.

Excerpts From TeleCable Exhibit 96

October 4, 1968

File: Fac. Lsd. 1-4

Bloomington

[1] MEMORANDUM

TO: C. L. Cox

Subject: CATV Bloomington

Should we contract or build ourselves

We must cover entire system with our engineers for pole work and clearances. This would lend itself to picking up all span measurements, spot taps and spot houses to use in

engineering the job. However, Jerrold is willing to give us some consideration in their quote if we furnish the above information to them. They are to furnish quote on this.

Construction of the strand for the job does not control whether we do the complete job or not. We have received a favorable reduction in Jerrold quote if we desire to place the strand. (\$858 per mile) (Our estimate for this work is approximately \$600 per mile.)

The fact of outside forces working on our pole line, around and on our cable facilities, drops and terminals is not as desirable as having our own forces work in this area.

We have no experience in CATV installation and maintenance. Due to the critical timing on this project it would be advantageous to have experience available to assist in difficult situations. Contract favorable.

Jerrold has indicated they would be willing to provide a guarantee on shipping equipment if we were to install. (Can we depend on them for this?) Other companies are having difficulty along this line; however, they probably do not have guarantee.

Price is \$559 per mile for aerial cable in favor of contracting the job to Jerrold. (85% of 175 miles is Aerial Taps and drops not included.

Price is \$9.57 per tap and drop in favor of contracting the job to Jerrold. (Estimate average of 35 to 40 per mile) (Advantage per mile 9.57×40 equals \$382.80).

TeleCable Exhibit 102

**FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

March 25, 1969

IN REPLY REFER TO:

111040-L

General Telephone Company of Illinois
GT&E Communications, Inc.
1312 East Empire
Bloomington, Illinois 61701

Gentlemen:

The Commission has under consideration the application (P-C-7213) of the General Telephone Company of Illinois for certification under Section 214 of the Communications Act of proposed CATV facilities in Bloomington and Normal, Illinois; the petition to deny filed by TeleCable Corporation on October 21, 1968 and by Bloomington-Normal Perfect Picture Co. on October 22, 1968 and the petition for temporary and immediate ex parte relief filed by TeleCable Corporation on March 14, 1969, pursuant to Section 74.1109 of the Commission's rules and 4(i) of the Communications Act.

The purpose of this letter is to advise you that the Commission has the above matters, and particularly the petition for temporary and immediate ex parte relief, under active consideration. In view of the alleged time element and the nature of the allegations, it should be understood that any construction of the described facilities which is or will be undertaken by you will be at the risk of later Commission action on the pleadings.

Of course, any pleadings or other information you may file before the Commission takes action in this matter will be given our careful consideration.

Sincerely yours,

/s/ SOL SCHILDHAUSE
Sol Schildhause
Chief, CATV Task Force

/s/ (Illegible Signature)
for Bernard Strassburg
Chief, Common Carrier Bureau

cc: Donald P. McCormick, Esq.
GT&E Service Corporation
730—3rd Avenue
New York, New York 10017

Hogan and Hartson
815 Connecticut Avenue, N.W.
Washington, D.C. 20006

Dow, Lohnes and Albertson
1225 Connecticut Avenue
Washington, D.C. 20036

Normal Town Council
124 North Street
Normal, Illinois 61761

Bloomington City Council
City Hall Building
Bloomington, Illinois 61701

TeleCable Exhibit 103

April 9, 1969

GT&E Communications, Inc.
Bloomington, Illinois 60168

Gentlemen:

This is to record our desire to cooperate with you in attempting to meet your construction schedule for the installation of CATV facilities in Bloomington and Normal.

We agree that you may make temporary installation of your facilities on our poles, subject to the following limitations:

1. All installations to be made in a safe, workmanlike manner.
2. The minimum clearances required by Illinois Commerce Commission General Order 160 will be maintained at all times.
3. The location of CATV equipment on each pole will be specified by Illinois Power Company—such specification will be subject to the prior rights of the General Telephone Company.
4. Subsequent to the temporary installation, the permanent arrangement required by the Agreement will be established by pole replacement or rearrangement of facilities on the existing poles. Payment for such work will be as provided for in the Agreement.

We hope that allowing such temporary installations will facilitate providing CATV service promptly to the Bloomington and Normal communities.

If the above provisions are in agreement with your understanding, please sign below and return one copy to me.

Very truly yours,

ILLINOIS POWER COMPANY

/s/ J. O. McHood

By:

J. O. McHood, Manager of Operations

GT&E COMMUNICATIONS, INC.

/s/ G. M. GAGE

By:

Vice President

cc: R. A. Blakeney

G. H. Wetzel

TeleCable Exhibit 105

April 9, 1969

Mr. Ben F. Waple, Secretary
Federal Communications Commission
Washington, D.C. 20554
Re: File No. P-C-7213

Dear Mr. Waple:

This is to advise you that our customer having cancelled its order for service by letter dated March 28, 1969, we are hereby withdrawing our application filed in the file number.

Respectfully submitted,

**GENERAL TELEPHONE COMPANY
OF ILLINOIS**

Original Signed By

VERNON C. MAULSON

By

VERNON C. MAULSON

General Attorney

CC: The Normal Town Council
The Bloomington City Council
Hogan & Hartson
Dow, Lohnes and Albertson
GT&E Communications Inc.

Excerpts From TeleCable Exhibit 115

[1] **GT&E COMMUNICATIONS INC.**

GT&E Communications Inc. was chartered in May 1965 to broaden the corporation's capabilities for providing all of the communications requirements of its customers. GTEC's primary business scope is to create this capability

in communications fields not now covered by the Systems' various organizations. These fields included Cable Television, educational TV transmission, data transmission and other applications of closed circuit transmission.

There is little doubt that the future will require that GT&E have the capability for pursuing all possible communications markets. GTEC is the GT&E corporate vehicle that was created for accomplishing this end. The GTEC officers are: Mr. Clerkin, President; Mr. Gage, Vice President; and Mr. Stewart, Vice President and General Manager. The Board of Directors consists of: Mr. Warner, Mr. Douglas, Mr. Brophy and Mr. Clerkin.

GT&E Entry Into CATV

GTEC's entry into various markets has been on a planned basis. The first venture, and the one continually pursued since GTEC's inception, is Cable Television. Cable TV is one of the most widely discussed controversial, fastest growing industries in the American economy today. For these reasons, it was decided to strike here first.

• • • • •

[11] SIGNIFICANCE OF GENERAL SYSTEM MAJOR MARKETS

GTEC's planned short term objectives are to expand its penetration into the Cable TV market over as wide an area as possible. The primary area of emphasis is to pursue the most promising opportunities for Cable TV within the General System operating areas.

The following is the list of selected General System communities which offer the best investment and profitability opportunities. These have been designated *Major Markets*. The major General System targets are: Columbia, Missouri; Fort Wayne, Indiana; Lexington, Kentucky; Erie, Pennsylvania; Durham, North Carolina; and Bloomington-Normal, Illinois.

These six areas are significant in that collectively they represent:

- A. 645,200 population
- B. 208,200 households
- C. Average of 3.1 persons per household
- D. Housing starts totaling 5,400 per year
- E. Population increase (10 years—1950 to 1960) 12.0%
- F. Median income of \$5,500
- G. Aggregate income of \$952,000,000
- H. Employment increases averaging 7%, 1960-1965
- I. \$1,180,000,000 in retail sales (.4% of total U.S.)

[12] AND, in addition, they represented a potential of 2½ million dollars in annual revenues to the General System Operating Companies from the provision of Cable TV distribution facilities and drop connections.

[13] CHART 9—Facts about Bloomington/Normal

The General Telephone Company of Illinois is represented on the Major Market List by Bloomington/Normal, Illinois.

The Chamber of Commerce describes Bloomington/Normal as the geographical economic and educational hub of Illinois. A pioneer settlement in the early 1800's, the companion cities are today the trading center for 1000 square miles of rich, black farmland.

It is the home of two degree granting institutions, and a major insurance center with the home offices of eight major insurance companies located here: It is the largest corn production county and the second largest cereal producer in the United States. The cities enjoy an unusually sound economic base with excellent diversification of employment and revenue among agriculture, industry and finance-service organizations.

During the past decade, the twin cities have become exceptionally successful. Their combined population has gained approximately 21% in the past seven (7) years to

the present level of approximately 60,000. Average income is 20% greater than the national average.

In terms of General Telephone Company operations, Bloomington/Normal's nearly 45,000 business and residence primaries represent approximately 13% of the General Telephone Company of Illinois primaries. These cities have a stable economy, are growing steadily, and will continue to grow. These factors enhance the value of placing Bloomington and its neighbor city Normal on G'TEC's Major Market List.

* * * * *

[19] facilities for the system, and will realize in excess of \$158,000 in annual revenues in the fifth year. In looking at all of the General Telephone major market target cities, GT&E telephone operations could realize \$2.5 million in revenues annually from distribution systems created by GTEC's activity.

Automatic Electric Purchases By GTEC

In 1966 GTEC purchased through Automatic Electric, and other GT&E subsidiaries, approximately \$1,200,000 of Cable TV electronics. During 1967 these purchases exceeded \$1.5 million. Thus, the economics of the Cable TV industry expansion into General Telephone operating areas are certainly in favor of the combined resources of the GT&E operation companies and GTEC.

Operational Relationships With Cable TV Companies

Operational relationships can be a problem area when dealing with private Cable TV entrepreneurs. The private system owner typically knows very little about telephone plant, construction, and operations. He may have little familiarity with the substantial amounts of planning and control required for the success of *any* Cable TV endeavor. Here again, GTEC has the advantage of being staffed with competent, well-trained employees. Its engineers have many years of experience in the CATV industry.

Revenues and operational efficiency play an important role in the continued success of General Telephone and Electronics Corporation. Singly, they do not insure success, but together they cannot but mean success. GTEC, in [20] its Cable TV activities, can offer a package of revenues, and efficiently coordinated operations to the General Telephone Companies.

* * * * *

[25] SUGGESTED ACTION STEPS—
DURHAM, NORTH CAROLINA

The Major Market Program, as has been indicated, has great revenue and service potentials for GT&E. It has been reviewed and approved by GT&E Service Corporation management. From this point on the support and co-operation of General Telephone Company of Illinois will be critical in accomplishing our goal: the Cable TV franchise in Bloomington/Normal.

There are three (3) recommended action steps on the part of General Telephone Company of Illinois that will be necessary in attaining this goal:

1. A total commitment must be made to an intensive program aimed at assisting GTEC to obtain the Durham Cable TV franchise.

In this regard sufficient time, people and money must be allocated by General Telephone Company of the Southeast to efficiently realize the program's goals. In general terms, the same resources should be directed to this program as would be committed to securing any other customer with a potential of in excess of \$275,000 in annual revenues to your company.

2. A comprehensive program should be developed to obtain intelligence as to the Cable TV situation in Durham. Current [26] information must be available if the necessary coordination steps are to

be taken. Information must be provided to GTEC on a continuing basis. Included here would be appropriate information on scheduling, facilities, other applicants, city government activity, etc.

3. An employee education program should be initiated in Durham to inform the General Telephone Company of the Southeast employees as to Cable TV and GTEC's role in providing this service.

With your able assistance, the Durham Cable TV franchise award can be obtained. Anything short of an aggressive and intensive program by GTEC and General Telephone Company of the Southeast could result in losing this opportunity. The nature and size of the Durham Cable TV market, and the nature of the Cable TV industry, are such that a franchise will probably be awarded by the city in the not too distant future.

WE MUST ACT NOW.

TeleCable Exhibit 118

March 17, 1965

Mr. R. A. Reed
General Telephone Company
109 East Market Street
Bloomington, Illinois

Dear Dick:

As you are aware from our previous conversations, we have been looking very seriously at the CATV possibilities for the Bloomington-Normal area, and I am putting together material at this point for our group. I have notes in my files concerning a talk we had last summer and another visit you and I had in early February and again in late

February. In these notes I indicated that you had expressed the opinion that General Telephone in the Bloomington-Normal area would be willing to lease space on its poles to a qualified CATV operator at a rate that was in keeping with rates in other parts of the general system.

As I put together my final report I would greatly appreciate being able to include a note or letter from you substantiating my earlier understanding.

If this is possible I would appreciate your forwarding it to me in the near future.

Thank you very much for your help so far in this matter, and it appears that we may be working even more closely in the future.

Sincerely,

Timothy R. Ives
Station Manager

dc

Excerpts From TeleCable Exhibit 127

March 13, 1967

[1] REPORT

To: Honorable Mayor and City Council

From: City Manager

Subject: CATV Applications

This report serves as a compilation and summary of the CATV applications received by the City of Bloomington to date. This information was requested by the Council at a recent meeting.

<i>Firm name and Address</i>	<i>Local Attorney or Agent (if any)</i>	<i>Date of Application</i>
1. Friendly Broadcasters, Inc. Wm. L. Kepper, Pres. & Gen. Mgr. Charleston, Illinois	Att'y Costigan	1/25/65
2. Tevco Corporation Edgar E. Lundeen, Jr. P. O. Box 485 Bloomington, Illinois	Mr. Lundeen	10/10/65
3. Bloomington-Normal Full Vision Timothy R. Ives 1504 E. Washington St. Bloomington, Illinois	Mr. Ives	11/3/65
4. General Electric Cablevision Corp. Robert W. Kise, Mgr.-Midwest Region 1250 Stadium Drive Indianapolis, Indiana	Att'y Markowitz	11/23/65
5. James K. Donahue Room 476 Statler Office Bldg. Boston, Massachusetts	None	12/13/65
6. Selco Electronics, Inc. Leslie P. Simpson, General Manager Urbana, Illinois	Att'y. Webber Att'y Luedtke	1/16/67

Today, I talked with Mr. Walter Wright, President of General Telephone Company of Illinois, and he stated that the GT&E Subsidiary CATV Company is *not* interested at the present time in obtaining a CATV franchise for Bloomington and Normal. He stated that they are interested in leasing the CATV distribution system to a franchised company in accordance with the approved Illinois Commission tariff.

Excerpts From TeleCable Exhibit 135

[20] By Mr. Ricks:

Q. Do you recall the nature of any such understanding that your company, any positions that your company would take regarding Mr. Merwin's group's application for CATV? A. I remember the conversations to the extent, assuming they were going to be successful in the granting of the franchise to them, we would be willing and able, and gave them copies of the proposed tariffs. But I said this was purely a policy matter, and any further discussion or any further details in connection with it should go through the hands of coordination with respect to it. Merwin called me presumably a principal owner of this company as to what our feeling and philosophy was.

As I recall, we just talked in terms of general philosophies.

Q. Did you ever indicate to Mr. Merwin that you would be obliged to invite G-Tec into the Bloomington-Normal CATV franchise contest if his group would be unwilling to lease a channel facility from GTI? A. Well, as I recall it, at this point I did make the statement to him being a local entity that I felt that his chances for getting the franchise were pretty good, but in the event other entities were invited to bid on this thing, any [21] agreement or any understanding—not agreement, any understanding I had with him would have to go by the board from the standpoint of it was open to all parties, and I thought G-Tec as well as any other interested party in CATV—because our primary interest throughout all of this was to be able to rent the facilities to whomever won the franchise.

Q. You simply wanted to be assured, did you not, Mr. Wright, that if he were the successful applicant he would lease the facilities from GTI? A. This was the basis of our conversation. It was our interest of trying to obtain him if he did win this competition, that he would lease his facilities from us.

Q. Now, without such assurances you felt obliged to have your affiliated company involved? A. Basically, that is correct. Because on the basis of whomever won it, we were interested. General Telephone of Illinois was primarily interested in leasing the facilities.

Q. I understand.

Did you convey your understanding to Mr. Rowland when he assumed the presidency of GTI? A. I don't recall this at the time other than the conversations he may have asked me on specific questions later, because this was only one of many problems. This was still up

• • • • •
[24] then calling G-Tec in as an applicant. Whether this is a correct characterization or not, this is apparently the way Mr. Hayes saw it.

By Mr. Ricks:

Q. Now, did you learn of that meeting and did you go see Mr. Ives or Mr. Merwin as a consequence of it? A. I don't recall. I recall sitting in on one meeting. I am not sure which one it was. As I recall Myrick Hayes was not at the one that I sat in on. I don't remember at this point of sitting in on a meeting with Myrick Hayes. But I do remember a discussion about it subsequently, but the content of it I don't remember, and the timing and how this phased in some place else. I don't recall at this point.

Q. One last question. Going back to the organization of your parent company, are there operating executives in GT&E, the parent company, that have lines of authority that run down to the operating telephone companies? A. I don't know what you mean by "lines of authority."

Q. Well, is it more or less a holding company? A. GT&E as such, that's right, it is a financial and holding company. It is through the Service Corporation that our contacts are established on recommendations, and the pricing efforts, and standardized practices, and that type of thing.

• • • • •
[28] Merwin. Again, as I said earlier, in the philosophies of under what terms, and under what conditions we would

lease them the facilities and why we would lease the facilities, and this type of thing.

Q. Now, I will direct your attention to the same document that Mr. Ricks referred to entitled "Marketing CATV," where it states in the second paragraph that, "All possible information concerning the CATV inquiries should be provided to Mr. Stewart," who at that time was Vice-President, I believe, and General Manager of G-Tec. A. He was an officer in G-Tec. I don't remember just what his title was.

Q. "... before your company conducts any discussions or negotiations concerning the provision of CATV service."

Do you recall whether your discussions with Mr. Ives wherein his request concerning pole-attachment agreements, or if a CATV channel service offering was passed on to the Service Corporation, or Mr. Stewart? A. Again, as I say, I don't remember the timing on this, but I did make an attempt to keep Mr. Stewart informed of the status of our negotiations or conversations, our conversations with Perfect Pictures.

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Excerpts From TeleCable Exhibit 136

[187] A. February, '68 through November of '68.

Q. Did that include assisting G-Tec in the acquisition of franchises? A. Yes, it did.

Q. How many franchises did you help prosecute on behalf of G-Tec during your role as Manager in charge of Community Relations? A. May I ask a question just to clarify you?

Q. Surely. A. How many franchises did I work on or did I work on that we were successful in getting?

Q. Well, both. A. The Bloomington-Normal franchises; I worked on the Durham North Carolina franchise. It still has not been awarded in that City, to my knowledge today. Minot, North Dakota franchise, which is still not awarded today. Manitowoc, Wisconsin franchise, which is still not awarded to date. Mill-Creek, Pennsylvania, Township, which was awarded to another.

[188] Those would be all that I spent any official time on.

Q. Were you successful in any other besides Bloomington-Normal during this period? A. Not during that period, no.

Q. (To Mr. Lloyd) Would you show Mr. Bristol the brochure of April, 1968, the caption "Major Market Presentation"?

MR. LLOYD: Would I?

MR. RICKS: Yes.

(Whereupon Mr. Lloyd hands said document to the witness.)

Q. Did you have a hand in that presentation, Mr. Bristol?

A. Yes, I did.

Q. Would you describe your role in it? A. My role was not—I beg your pardon, my role did not cover any of the text of this particular presentation. I gave a demonstration, if you will, of our thin-brand presentation to the City of Bloomington and the Town of Normal in our bid for franchise as an illustration to accompany this presentation.

[189] Q. You gave this demonstration to what group? A. A group of officials of GTI.

Q. Was this on April 24th, 1968? A. I believe that is correct.

Q. Do you know who—I assume that someone in G-Tec prepared that; do you know who that might be? A. I don't know the individual or individuals that prepared it, at all, no.

Q. I get the impression in looking at it, in looking at that presentation rather hurriedly, that it can be used in different markets simply by taking out the sections specifically relating to that particular market and putting in the right section, such as you could use the presentation in, let's say, Durham, North Carolina, but take out the section relating to Bloomington-Normal and put in the section relating to Durham, North Carolina. Do you know whether it was created with that in mind, that it could be used in markets other than Bloomington-Normal? A. Yes.

[190] Q. Now were you responsible primarily for making the presentation, you called it a "demonstration" at the April 24th, 1968 meeting with the GTI officials? A. Would you mind asking that again? I'm not sure I understood the question.

Q. Did you personally make the presentation on behalf of G-Tec at the April 24th, 1968 meeting with the officials of GTI? A. I was one of three people who participated in the presentation.

Q. Would you name the other two? A. Mr. Winston Stewart, Mr. Lowell Thomas.

Q. They are both with G-Tec? A. Correct .

Q. Who requested the meeting, do you recall? A. G-Tec.

Q. And at the end of the presentation or demonstration, were you assured of the cooperation of GTI in the franchise activity? A. Yes, I believe so.

[191] Q. Have you used this presentation in subsequent franchise activities, A. No.

Q. Do you know why? A. Not really.

Q. Do you have a belief as to why you have not used it? A. Not really.

Q. Is it true that—this presentation is directed to a community in which a General Telephone Company operates, is it not? A. Yes.

Q. And in effect it demonstrates the benefit of G-Tec operating the CATV system to the general system? A. Yes.

Q. May I look at the presentation for just a moment?

(Whereupon Mr. Lloyd hands said document to Counsel.)

Q. Did you have a question and answer period following your presentation? A. Yes, we did.

[192] Q. I don't know if you answered the question or not, Mr. Bristol, I asked whether there had been a question and answer period and I think you said "Yes"? A. Yes.

Q. Do you recall it well enough to know the type of questions that were asked and the information that was given? A. Well, all I can say is it was rather general

questions asked about Cable TV and how it operated in the community, how G-Tec operates and markets Cable TV in a community, what we expected in construction performance, service performance, repair, that type of general inquiry, and our answer to it.

Q. Following this meeting or during this meeting was Mr. Griswold appointed as the CATV co-ordinator to work with G-Tec? A. As I recall, he was appointed as such.

Q. What was his responsibility? A. Well, I believe that question would be better asked of someone from GTI.

[193] MR. LLOYD: Well, if you know, Mr. Bristol. The question was asked of you. A. Well, as pointed out by Mr. Rowland, President of GTI, that Mr. Griswold would be responsible for liaison work between our respective companies, giving us information that would help us be competitive in securing a franchise, and likewise would receive information from us that would be of interest to them in making their plans to implement a system under their tariff, and leasing distribution facilities to us.

Q. And did Mr. Griswold function in that capacity? A. To a certain extent, yes.

Q. Did you work with any other member of GTI in the sense of a liaison, someone that you could contact if you needed information or assistance? A. Yes.

Q. Who would that have been? A. Mr. Malone, as Division Manager, and later through chain of commands, Mr. Shamburg,

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TeleCable Exhibit 137

March 18, 1968

Mr. Robert D. Griswold
Marketing Director
General Telephone of Illinois
1312 East Empire Street
Bloomington, Illinois 61701

Dear Mr. Griswold:

We request the opportunity to present our Major Market Program to the President and staff of the General Telephone Company of Illinois. This is a presentation covering the benefits to the General System through G'TEC and the Telephone Companies actively pursuing and securing CATV franchises in certain of the larger metropolitan areas served by General Telephone. Bloomington, Illinois is such an area.

We realize that to build and maintain a 140 mile broadband distribution system in Bloomington, presents a major decision for General Telephone Company of Illinois. We feel that we can demonstrate that this project is worthwhile pursuing and has the support of the General System topside

In support of this we have the cooperation of the Service Corporation staff and will expect many of the Directors or members of their staff to participate in the presentation. Their purpose in attending will be to discuss the engineering, operating and financial aspects of carrying out such a project.

May we suggest a meeting during the week of April 28, 1968 or earliest convenient date. Our program and discussion following takes about three (3) hours. In deference to the Service Corporation people travelling from and to New York, it would be well to schedule such a meeting near mid-week.

Please let us know the date, time and place that we may present the Major Market Program to the General Telephone Company of Illinois.

Very truly yours,

L. E. Thomas
Region Manager

LET/nd

cc: Mr. W. F. Stewart

TeleCable Exhibit 138

April 5, 1968

File: MTG 1

MEMORANDUM

To: All General Office Department Heads
Division Managers

Subject: Programs—CATV—G'TEC

Plans have been made with GT&E Communications Inc. (G'TEC) to present their Major Marketing Program during the afternoon of Wednesday, April 24. This Program will be presented in the General Office Auditorium starting at 1:00 P.M. and concluding at 4:00 P.M.

The presentation will cover the benefits to the General System through the active participation of both G'TEC and the telephone companies in securing CATV franchises in certain of the larger metropolitan areas served by the General Telephone System.

Please arrange your schedule so as to allow you to attend this presentation. Immediately following this presentation

we will proceed with the second session of the Management Seminar scheduled from 4:00 P.M. to 6:00 P.M. and 7:00 P.M. to 9:00 P.M.

/s/ D. E. ANDERSON

Operating Vice President

DEA RHP

CC to W. C. Rowland

H. R. Baldwin

R. R.

R. C. Ross

Excerpts From TeleCable Exhibit 140

[3]	EMPLOYEE	EFFECTIVE DATE	TITLE	COMPANY
	L. D. Abbott	1/ 1/67 - 6/12/67	Sales Promotion & Trng. Admin.	GT&E Service Corp.
		6/12/67 - 4/15/68	Marketing Admin.	GTEC
		4/15/68 -	Marketing Dir.	GTEC
	L. D. Bishop	1/ 1/68 -	Controller	GTEC
	R. W. Britt	4/27/66 - 3/ 1/67	Operating Vice President	GTI
	R. D. Griswold	12/ 1/67 -12/22/67	Marketing Dir.	GTI
	W. C. Rowland	12/ 1/67 -	President	GTI
	J. L. Malone	12/ 1/67 -	Division Mgr. (Central Div.)	GTI
	W. F. Stewart	6/ 1/65 -	V.P. & Gen. Mgr.	GTEC
	G. H. Gage	6/ 1/65 -	V.P. V.P.—Telephone Operations	GTEC GT&E and GT&E Service Corp.
	W. G. Wright (Retired)	3/15/61 - 1/ 1/62	V.P.—Operations	GT&E and GT&E Service Corp.
		1/ 1/62 - 9/ 1/67	President	GTI
	N. A. White	4/27/66 -11/10/66	Marketing Dir.	GTI
	W. R. Jarmon	2/25/65 -	V.P.—Revenue Requirements	GT&E and GT&E Service Corp.
	C. L. Cox	10/ 1/65 -	Chief Engineer	GTI
	R. W. Mathews	10/ 1/65 -	Commercial Dir.	GTI
	M. L. Myrick	1/ 1/66 -	Director— Regulatory Matters	GT&E Service Corp.
	R. D. Kingston	1/ 1/66 - 7/ 1/67	Marketing Dir.	GT&E Service Corp.
	R. C. Ross (Deceased)	12/ 1/67 -12/22/67	Operating V.P.	GTI
	J. J. Clerkin, Jr.	1/ 3/66 -	President Executive V.P.— Telephone Oper.	GTEC GT&E and GT&E Service Corp.

TeleCable Exhibit 141

<u>SERVICE AREAS</u>	<u>CHANNEL SERVICE</u>	<u>POLE ATTACH.</u>	<u>TELEPHONE SYSTEM</u>
Sun City, California	X		General
San Bernadino, California		X	General
Novato, California	X		General
Edmonds, Washington		X	General
Marysville/Arlington, Washington		X	General
Brownfield, Texas	X		General
Levelland, Texas	X		General
Adrian/Tecumseh, Michigan	X		General
South Haven, Michigan	X		General
Winchester, Indiana	X		General
Angola, Indiana	X		General
Macomb, Illinois		X	General
Charleston, Illinois		X	Consol. Ill.
Bartow, Florida		X	General
Lake Wales, Florida		X	General
Bradenton/Manatee County, Florida		X	General
Sarasota County, Florida		X	General
Kiski Valley, Pennsylvania	X		Gen. & Mid. Cont.
Athens, Georgia		X	Bell
Eastman, Georgia		X	Bell
Fitzgerald/Ocilla, Georgia		X	General
Hazelhurst, Georgia		X	Bell
McRae/Helena, Georgia		X	General
Sandersville/Tennille, Georgia		X	Bell
Vidalia, Georgia		X	Bell
Toccoa, Georgia		X	General

FRANCHISES

6-19-69

California

San Bernardino
San Bernardino County
Riverside County
Novato
Marin County

Florida

Bartow
Lake Wales
Polk County
Bradenton
Manatee County
Sarasota
Sarasota County

Georgia

Athens
Eastman
Fitzgerald
Ocilla
Hazelhurst
McRae
Helena
Sandersville
Tennille
Toccoa
Vidalia
Lyons

Illinois

Bloomington
Normal
Charleston
Macomb
County of McDonough

Indiana

Angola
Winchester

Michigan

Adrian
Tecumseh
Owosso
Corunna
South Haven

Pennsylvania

~~Kirk~~
Apollo
No. Apollo
Leechburg
Vandergrift
Oklahoma
E. Vandergrift
Hyde Park

Texas

Brownfield
Levelland
Littlefield

Washington

Arlington
Marysville
Edmonds
Snohomish County

Wisconsin

Portage

CALIFORNIA

Serving
Telephone
Company

Community

Result

General	Lancaster	Awarded to WGN subsidiary
General	Pomona	Awarded to Kaufman and Broad
Bell and General	Garden Grove	
General	Hemet	Awarded to
General	Los Gatos	Awarded to TelePrompter

Correspondence

<u>Serving Telephone Company</u>	<u>Community</u>	<u>Letter dated</u>	<u>Follow up— Action Taken</u>
General	Ontario	10/25/67	Letter dated 2/9/68
General	Upland	10/25/67	Awarded to International Cable TV Corp.
General	Azusa	3/20/68	
General	Camarillo	3/16/67	Letter dated 2/16/68
General	Rancho Camarillo		
General	Redlands	11/21/67	Letter dated 2/9/68
General	San Jacinto	9/22/67	Letter dated 2/9/68
Bell	Riverside		
Bell	Colton		
General	Santa Monica		Awarded Theta Cable of California

FLORIDA

<u>Serving Telephone Company</u>	<u>Community</u>	<u>Result</u>
General	Venice	Awarded to Venice Central Antenna Network Inc.
General	North Port Charlotte	Awarded to Gulf Coast Teleception
General	St. Petersburg	
General	Lakeland	Awarded to Community Cablevision Inc.

GEORGIA

<u>Serving Telephone Company</u>	<u>Community</u>	<u>Result</u>
Southern Bell	Bainbridge	Awarded to Bainbridge TV Cable Inc.

IDAHO

<u>Serving Telephone Company</u>	<u>Community</u>	<u>Result</u>
Bell	Boise	Awarded to Gen Coe

ILLINOIS

<u>Serving Telephone Company</u>	<u>Community</u>	<u>Result</u>
General	Bloomington	Awarded to GTEC
General	Normal	Awarded to GTEC
Bell	Decatur	Awarded to General Electric Cablevision
Northwestern Tel.	Freeport	Awarded to T.V. Cable Company of Stevenson County
General	Mendota	Awarded to T.V. Transmission Company
General	Princeton	Awarded to Princeton Perfect Picture Inc. Intercity Cable Corp.

Correspondence

Carbondale
Murphysboro

INDIANA

<u>Serving Telephone Company</u>	<u>Community</u>	<u>Result</u>
General	Angola	Awarded to GTEC
General	Sullivan	Awarded to Sullivan TV Cable Co.
General	Winchester	Awarded to GTEC
General	Goshen	Awarded to Valley Cablevision Corp. Citcom Inc.
Bell	Mishawaka	
General	Fort Wayne	
General	Connersville	
General	Elkhart	Awarded other than GTEC
Bell	Gary	Awarded to Lake County Cable TV Inc.
General	Greencastle	Awarded to Putnam All Channel Cablevision Inc.
Bell	Indianapolis	
General	Terre Haute	Awarded to Indiana Cable TV Inc.
General	Purdue University	

KENTUCKY

<u>Serving Telephone Company</u>	<u>Community</u>	<u>Result</u>
General	Ashland	Awarded to Klearpix of Kentucky Inc.
General	Catlettsburg	

MICHIGAN

<u>Serving Telephone Company</u>	<u>Community</u>	<u>Result</u>
General	Adrian	Awarded to GTEC
General	Alma	
General	Three Rivers	Awarded to TeleCable
General	Tecumseh	Awarded to GTEC
General	St. Louis	
General	Dowagiac	
General	Allegan	Awarded to Allegan TeleCeption Inc.
General	Luddington	Awarded to CableVision Inc.
General	St. Johns	
Bell	Ann Arbor	
Bell	Grand Rapids	
Bell	Ypsilanti	

MISSOURI

<u>Serving Telephone Company</u>	<u>Community</u>	<u>Result</u>
Bell	Springfield	Awarded to Int. Telemeter
United	Jefferson City	Awarded to Int. Telemeter
General	Columbia	Awarded to Int. Telemeter

NEBRASKA

<u>Serving Telephone Company</u>	<u>Community</u>	<u>Result</u>
General	Kearney	Awarded to Kearney Multi-Vue TV System, Inc.

NEW YORK

<u>Serving Telephone Company</u>	<u>Community</u>	<u>Result</u>
Orange County Tel. Co.	Middletown	

NORTH DAKOTA

<u>Serving Telephone Company</u>	<u>Community</u>	<u>Result</u>
Northern States	Minot	

Correspondence

<u>Serving Telephone Company</u>	<u>Community</u>	<u>Letter dated</u>	<u>Follow up— Action Taken</u>
Bell	Fargo	11/27/67	Letter dated 2/9/68
Bell	Moorehead	12/27/67	Letter dated 2/9/68

OHIO

<u>Serving Telephone Company</u>	<u>Community</u>	<u>Result</u>
Warren Tel. Co.	Warren	

OREGON

<u>Serving Telephone Company</u>	<u>Community</u>	<u>Result</u>
Pacific Northwest Bell	Lake Oswego	Awarded to West River T.V. Cable Inc.

PENNSYLVANIA

<u>Serving Telephone Company</u>	<u>Community</u>	<u>Result</u>
General	Borough of Apollo	Awarded to GTEC
General	Leechburg	Awarded to GTEC
General	Township of Millcreek	Awarded to Erie TV Cable Corp.
Bell	Penn Hills	Awarded to Centre Video Corp.
General	Greensburg	Awarded to WHJB Inc.
General	Vandergrift	Awarded to GTEC
General	No. Apollo	Awarded to GTEC
General	Hyde Park	Awarded to GTEC
General	Oklahoma	Awarded to GTEC
General	E. Vandergrift	Awarded to GTEC
Bell	Washington	

SOUTH CAROLINA

<u>Serving Telephone Company</u>	<u>Community</u>	<u>Result</u>
General	Georgetown	Awarded to Television Cable Co. Inc. also a group of individuals

TENNESSEE

<u>Serving Telephone Company</u>	<u>Community</u>	<u>Result</u>
General	Cookeville	
General	Crossville	Awarded to Crossville TV Cable Co.
General	McMinnville	Awarded to Athens TV Cable Co. of McMinnville Inc.
Bell	Chattanooga	

TEXAS

<u>Serving Telephone Company</u>	<u>Community</u>	<u>Result</u>
General	Littlefield	Awarded to GTEC
Bell	Amarillo	
S.W. Bell	Borger	
S.W. Bell	Wichita Falls	

WASHINGTON

<u>Serving Telephone Company</u>	<u>Community</u>	<u>Result</u>
General	Mountlake Terrace	
General	Lynnwood	
Bell	Spokane	
General	Marysville	Awarded to GTEC
General	Snohomish County	Awarded to GTEC and others

Correspondence

<u>Serving Telephone Company</u>	<u>Community</u>
Bell	Spokane County

WISCONSIN

<u>Serving Telephone Company</u>	<u>Community</u>	<u>Result</u>
General	Two Rivers	
General	San Prairie	
General	Reedsburg	
Bell	Manitowoc	
General	Antigo	
General	Prairie du Chien	Awarded to Kickapoo Antenna Vision Inc.

Excerpts From TeleCable Exhibit 142

[6] Mr. Lloyd: No problem.

Mr. Ricks: And GT&E Communications, Inc.—

Mr. Lloyd: We will pronounce it "G-Tec."

Mr. Ricks: That will be referring to General Telephone and Electric Communications, Inc.

Mr. Lloyd: This is perfectly fine and I will endeavor to inform our witness that this is the code we use.

I think your opening statement may have referred to G-Tec as "GT&E."

Mr. Ricks: I did and I was in error.

Mr. Lloyd: Mr. James Higgins is the first party you requested and he is here and ready to be sworn.

We will waive witness's signature.

[7] **James C. Higgins**

called as a witness by the Petitioner, TeleCable Corporation pursuant to Notice and Rules of the Federal Communications Commission, being duly sworn, was examined and testified as follows:

Examination

By Mr. Jay E. Ricks

Q. Please state your name. A. My name is Jay C. Higgins.

Q. And are you employed by GT&E? A. Yes, sir.

Q. Would you state your present position with GT&E? A. Sales Program Co-ordinator of Central Division located at Normal, Illinois.

Q. How long have you held that position? A. Since August 16, 1968.

Q. What was your position prior to August 16, 1968? A. District Commercial Manager, Bloomington, Illinois.

Q. Would you describe your duties as District Commercial Manager? A. Well, let's answer that in this way: Coordinate all business office activities for 29 exchanges, which included Bloomington-Normal.

[8] Q. This is the entire Central—you were District Commercial Manager for the Central District? A. No, that was for the Bloomington District.

Q. For the Bloomington District? A. Yes, right.

Q. Who was your immediate supervisor? A. My immediate supervisor?

Q. Yes, when you were District Commercial Manager. A. Until May 1, 1968, Mr. R. A. Reed.

Q. What was his title until May 1, '68? A. Division Commercial Manager.

Q. And who was your boss after that, your immediate superior after May 1, 1968? A. Don Fester.

Q. When did you first become aware of the possibility that there would be a CATV operation

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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554

DOCKET NO. 18538

File No. SR-3695-N

In the Matter of

Petition by TeleCable Corporation to stay construction or operation of a CATV system in Bloomington and Normal, Illinois, by GT&E Communications, Inc.

Appearances

Jay E. Ricks and *Marvin J. Diamond* (Hogan & Hartson) on behalf of TeleCable Corporation; *David H. Lloyd* (Arnold & Porter) and *George E. Shertzer* on behalf of GT&E Communications, Inc., General Telephone Company of Illinois and General Telephone & Electronics Corporation; *Donald P. McCormick* on behalf of GT&E Communications, Inc. and General Telephone Company of Illinois; *David Davis, Jr.* (Davis & Davis) on behalf of GT&E Communications, Inc.; *Vernon C. Maulson* on behalf of General

Telephone Company of Illinois; *Earl R. Stanley* (Dow, Lohnes and Albertson) on behalf of Bloomington-Normal Perfect Picture Corporation; *Edward R. Wholl* on behalf of the Chief, Common Carrier Bureau; and *Francis V. Peck* and *William H. Johnson* on behalf of the Chief, CATV Task Force, Federal Communications Commission.

Decision

Adopted: September 4, 1969;

Released: September 5, 1969

Commissioner H. Rex Lee for the Commission: Commissioner Bartley concurring in the result; Commissioner Johnson absent.

1. By our Order to Show Cause, 17 FCC 2d 517, released May 6, 1969, as modified by the Review Board, this proceeding was initiated against three affiliated companies: GT&E Communications, Inc., (GTEC), General Telephone and Electronics Corporation (GT&E),¹ and General Telephone Company of Illinois (GTI).² This action was taken at the behest of TeleCable Corporation which contends that the activities of respondents with respect to proposed CATV operations in Bloomington and Normal, Illinois, when viewed together, must be considered anti-competitive, illegal and contrary to the public interest. TeleCable alleges that construction in the aforementioned communities for the purpose of providing CATV channel distribution facilities has been undertaken without receiving a certificate of public convenience and necessity pursuant to Section 214 of the Communications Act and that such certification under

¹ The Review Board modified the Order to Show Cause to add GT&E as a party respondent, and amended the language of the order throughout to make appropriate changes in the light of GT&E's participation in the proceeding (FCC 69R-270, 18 FCC 2d 348, released June 17, 1969).

² The three companies collectively will be referred to herein as the respondents.

the circumstances of this case is required.³ It further alleges that GTI and GTEC have "conspired to take advantage of the monopoly over utility poles and easements enjoyed by General Telephone of Illinois in such a way as to eliminate competition for CATV in Bloomington and Normal;" and that as a result thereof, GTEC was awarded the CATV franchises in those communities. TeleCable contends that any telephone company with an affiliate engaged in CATV activities will be able to defeat the purposes and objectives which Section 214 is intended to achieve if the alleged activities are permitted; and that unless GTI and GTEC are ordered to cease and desist from such activities, the objectives of Section 214 are endangered.

2. Upon consideration of the pleadings submitted in connection with this matter, we directed the respondents to show cause why they should not be ordered to cease and desist from the construction and operation of CATV facilities in Bloomington and Normal. In addition, we specified in the show cause order certain areas of inquiry to be explored at the hearing as follows:

(1) To determine all of the facts and circumstances surrounding:

(a) the negotiations and discussions for pole attachment agreements by and between TeleCable Corporation and Bloomington-Normal Perfect Picture on the one hand and General Telephone Co. of Illinois on the other hand;

(b) the relationship among GT&E Communications, Inc., General Telephone Co. of Illinois, and General Telephone and Electronics Corporation;

(c) The request by General Telephone Co. of Illinois to withdraw its Section 214 application (P-C-7213); and

³ Although GTI had submitted a certification application for the proposed operation, it sought to withdraw the application on April 9, 1969, after oppositions thereto had been filed.

(d) the present and/or proposed plans or actions with respect to the construction and/or operation of CATV facilities in Bloomington and Normal, Illinois, by GT&E Communications, Inc.

(2) To determine whether in view of the relationship among GT&E Communications, Inc., General Telephone Co. of Illinois, and General Telephone and Electronics Corporation, and the evidence adduced pursuant to issue 1 above, the proposed actions by GT&E Communications, Inc. and General Telephone Company of Illinois, are such as to require prior Section 214 certification by the Commission.

(3) To determine whether the actions of General Telephone Co. of Illinois, GT&E Communications, Inc., and General Telephone and Electronics Corporation vis-a-vis the TeleCable Corporation and Bloomington-Normal Perfect Picture are anti-competitive and monopolistic in nature, in contravention of the Communications Act or are otherwise contrary to the public interest.

(4) To determine whether in light of the evidence adduced pursuant to the foregoing issues, General Telephone Co. of Illinois, GT&E Communications, Inc. and General Telephone and Electronics Corporation, jointly or separately, should be directed to cease and desist from providing CATV facilities or services in the communities of Bloomington and Normal, Illinois.

(5) To determine in light of the foregoing whether any other action should be taken by the Commission and the nature thereof.

The burden of proof was placed upon respondents with respect to the interrelationship of the respondents; the circumstances surrounding the withdrawal of the GTI Section 214 application; and GTEC's plans and actions with respect to construction or operation of such facilities in Bloomington and Normal. As to the remaining issues, the burden of proof was placed upon TeleCable.

3. We directed that an expedited timetable be followed; that, upon the closing of the record, it be certified to the Commission for final decision; and that the parties file their proposed findings of fact and conclusion of law within twenty (20) days after the time the record is closed. Chester F. Naumowicz, Jr., was designated the Presiding Officer, and before him a prehearing conference was held on May 28, 1969, and hearings were held on June 25, 26, 27 and 30, and July 3, 1969.⁴ On July 8, 1969, Hearing Examiner Naumowicz closed the record and certified it to the Commission⁵ (Order, FCC 69M-845, released July 9, 1969). On July 28, 1969, proposed findings of fact and conclusions of law were filed by the respondents jointly, by TeleCable, by the Chief, Common Carrier Bureau, and by the Chief, CATV Task Force.

4. We shall first consider the evidence going to the issues concerning the interrelationships among GT&E, GTEC and GTI. The stock of GT&E is publicly held and the corporation functions much as a holding company, exercising control over some 115 corporations⁶ each of which is either

⁴ In response to a separate petition filed by TeleCable on May 23, 1969, we prohibited GTI or GTEC from placing CATV facilities into operation in Bloomington and Normal until Section 214 certification is obtained or until matters to be inquired into in this proceeding are resolved (Memorandum Opinion and Order, FCC 69-574, released May 28, 1969; reconsideration denied, 18 FOC 2d 476 (1969); appeal pending in the United States Court of Appeals for the Seventh Circuit, Case No. 17,785 *sub nom.* (*GT&E Communications Inc. v. United States, et al.*).

⁵ Motions to correct the transcript were filed on July 16, 1969, by the Chief, CATV Task Force, and on July 17, 1969, by TeleCable Corporation. These motions are unopposed and will be granted.

⁶ Within this corporate family, the corporations are referred to collectively as "The General System." There are more than 30 domestic and international telephone subsidiaries in the General System. At the end of 1967, these telephone operating companies served 7.7 million telephones in over 7500 communities with a total population of approximately 18 million people in portions of 34 states. International telephone operating subsidiaries served more than a million telephones principally in the Provinces of British Columbia and Quebec, Canada.

a subsidiary of GT&E or of one of its wholly-owned subsidiaries. GT&E Service Corporation is a wholly-owned subsidiary with no operating functions insofar as this record discloses. It provides consultative services, including legal advice, and articulates top level policy to the operating subsidiaries. Any departure from Service Corporation policy recommendations must be justified by the operating subsidiary. All of the parent corporation's officers are officers of the Service Corporation, with corresponding titles, and eight of the nine-man Board of Directors of the Service Corporation are either officers or directors, or both, of the parent corporation. Thus, the Service Corporation with interlocking directors and officers functions as the coordinating arm of the parent corporation, tying together the farflung activities and policies of operating subsidiaries through the close identity of the respective officers and directors. The Service Corporation engages in no activities which directly produce income. Its expenses are shared among the operating companies.

5. GTEC is a wholly-owned subsidiary of GT&E which has an operating function—to engage in the furnishing of CATV service directly to the home or business establishment. Incorporated in 1965, it operates outside as well as within areas served by General System telephone companies, but it has been a successful bidder for CATV franchises only in areas where General System telephone companies operate. In other areas, GTEC has acquired CATV franchises and systems by purchase from the existing operators. An identity of officers and directors exists between the parent and GTEC and between the Service Corporation and GTEC. Of GTEC's 7 officers, 5 are officers of the parent corporation and the Service Corporation. Of GTEC's 5 directors, 2 are officers and directors of the parent and the Service Corporation and the others are either officers of both or directors of both. For example, Mr. J. J. Clerkin, Jr. is an officer and director of GTEC, and the parent, and of the Service Corporation; and Mr.

J. J. Douglas is an officer of the parent and Service Corporation, and a director of all three corporations. Furthermore, GTEC conducts multimillion dollar operations with an insignificant amount of capitalization, relying upon financing by its parent corporation.

6. With respect to GTI, a somewhat different factual situation is presented. GTI has no directors or officers in common with any of the three aforementioned corporations (GTEC, GT&E or the Service Corporation); and although GT&E holds over 90 per cent of the voting stock of GTI, there is evidence that this operating telephone company enjoys a certain measure of autonomy in its day-to-day operations. Nevertheless, the policymaking Service Corporation, the recommendations of which must be accepted by the operating companies unless there is shown to be good reason for deviating from them, has the authority to curtail the autonomy usually accorded operating companies. The policy of GTI regarding pole line attachment arrangements with CATV operators and the conduct and activities of the bidders for the Bloomington-Normal franchises must be viewed in the light of the corporate relationships of the General System companies here involved.

7. The record establishes that, from time to time, a number of groups have been interested in constructing and operating CATV systems in Bloomington and Normal, Illinois, which are contiguous urbanized communities. Of these, we are here concerned only with the three which submitted bids to the municipal authorities on May 29, 1968. They are GTEC, TeleCable Corporation (TeleCable), and the "Ives Group," which for a time was known as Bloomington-Normal Full Vision, but was incorporated in the spring of 1967 as Bloomington-Normal Perfect Picture Corporation (Perfect Picture). Perfect Picture which was the first of these three to explore the possibility of establishing CATV in these communities, retained in 1965 Daniels & Associates, a consulting firm, to prepare a study of CATV potential in Bloomington and Normal. All three bidders are

parties to this proceeding and have entered appearances, although Perfect Picture has participated only to a limited extent.

8. A discussion of the policy determinations made by the General System companies with respect to their participation in the provision of CATV service and the events and the activities of the parties which preceded the submission of bids for CATV franchises in Bloomington and Normal will be helpful to a consideration of the issues before us. Prior to 1965, the participation by the operating telephone companies of the General System in CATV activities was generally confined to the rental of space on utility poles for the CATV operator to place his own distribution and feeder cables. During this early period in the development of CATV, several General System companies offered CATV channel service pursuant to tariffs but without a coordinated policy.⁷ Commencing in January 1964, statements of decision-making personnel of GT&E and Service Corporation reflect a concept that in view of the tremendous potential of coaxial cable networks as a means of providing communications to homes and business establishments, the General System companies should own the CATV channel distribution facilities in areas served by its operating telephone companies in order to maintain its position in the communications industry. Service Corporation recommended in February, 1965 that the operating telephone companies offer CATV channel service rather than lease pole space to CATV operators.

9. After the incorporation of GTEC in May 1965, Service Corporation advised all General Telephone operating company presidents that it was in the process of preparing a

⁷ The principal alternatives available to CATV operators are: (a) to contract for the rental of space on the utility poles for its lines and to construct its own CATV system; or (b) to obtain channel service from distribution facilities constructed by the telephone company and offered pursuant to tariff rates. The key role of the telephone company in either approach is self-evident.

"CATV Marketing Guide" which would contain recommended procedures for determining the potential of CATV in markets throughout each company's operating area, and that all possible information concerning any CATV inquiry should be provided Mr. W. F. Stewart of GTEC before conducting discussions concerning CATV service. The Guide was distributed in June 1965. Therein the telephone companies were given the responsibility to ascertain which communities had CATV potential and to report the information to Service Corporation. A "major role in assisting the operating companies in marketing CATV distribution facilities" was given to Service Corporation which also was to "assist the companies in performing their specific duties."

10. GTI filed with the Illinois Commerce Commission in 1965 a tariff for channel service and for a period thereafter followed a policy of not entering into any pole attachment agreement for CATV service. However, this policy was relaxed in 1966 after a new tariff with lower rates became effective. GTI announced that in view of the lower tariff rates which it deemed to be competitive to pole lease agreements, CATV operators would be offered the option of either entering into such an agreement or leasing the telephone company's channel facilities. At the same time, the rate for pole space rental was increased from \$3.00 to \$4.50 per pole per year. However, William C. Rowland who succeeded to the presidency of GTI in September, 1967, reversed this policy, and took the position that GTI would not enter into pole line attachment agreements with CATV operators. By a memorandum dated February 16, 1968, which was addressed to the company's division managers, GTI announced that it would not sign any "new pole lease agreements with CATV companies proposing to furnish CATV service in any communities served by our company" and advised its managers to "review" and "negotiate" existing agreements. The memorandum further directed that "This approach to CATV facilities and pole lease

agreements should be discussed with municipal authorities for their consideration when dealing with matters pertaining to CATV facilities." So far as appears from the evidence of record, this statement continues to be the policy of GTI. According to the president of GTI, this policy was adopted because GTI is in the business of marketing channel services to potential CATV operators and it would be inconsistent to offer pole attachment privileges to a CATV operator and aid him in competing with GTI's channel distribution service.

11. Throughout the State of Illinois, the telephone and power companies share poles, but ownership remains with one company or the other. A situation of imbalance had developed in that GTI owned only 30 per cent of the poles and the power company owned 70 per cent, whereas they both had equal rights to their use. In 1965, the two companies began review of their pole use agreement and decided to equalize the ownership of poles in Illinois. Ultimately, on February 6, 1967 the companies entered into an agreement whereby sufficient poles would be transferred to GTI to balance this ownership situation. This agreement provides, in part, as follows: "Pole space to be occupied by a third party shall be assigned by the owner of the pole with concurrence of the other primary user. The assignment of such space and usage by a third party is subordinate to the rights and present and future requirements for the space of the other primary user." Thus, GTI's concurrence was required for Illinois Power to permit any third party to rent space on poles owned by Illinois Power Company, including GTEC, TeleCable or Perfect Picture.

12. In the Bloomington-Normal area, both GTI and Illinois Power Company have existing utility poles. Theoretically, a CATV operator may erect his own poles, or lay the distribution cable underground, and thus utilize neither the telephone company's channel service nor the telephone company's utility poles, but as a practical matter

the use of existing poles is necessary. For esthetic reasons residents object to the multiplicity of poles in the community and therefore it is difficult if not impossible to obtain permits from the city to erect an entirely separate system of poles.

13. In negotiations between Perfect Picture and GTI during 1965 and 1966, GTI expressed a strong preference for providing CATV facilities pursuant to a channel service tariff, but it did not preclude the possibility of making pole space available.⁸ During this period, GTI and Perfect Picture also considered the possibility of an arrangement whereby GTI would construct the distribution facilities under its franchise as a telephone company with a lease-back of the facilities to Perfect Picture which would undertake the CATV operations without CATV franchises from the communities involved.⁹ At a meeting on February 9, 1966, between GTI's then president, Walter G. Wright, and Loring C. Merwin of the Ives group, Wright informed Merwin that GTEC had been formed and that it was seeking CATV franchises throughout the country. As a result of the discussion at this meeting, Merwin concluded that there was little likelihood of a pole attachment agreement with GTI and that unless a leasing arrangement was accepted, GTI "will probably call in their CATV subsidiary and give them a lease." In an attempt to convince GTI that its 1965 tariff did not constitute a realistic alternative to CATV facilities owned by the CATV operator, Perfect Picture gave GTI a copy of financial projections prepared

⁸ Perfect Picture took the position that a pole attachment arrangement was preferable because it would generate more "cash flow" than would a channel service offering.

⁹ On March 28 and April 4, 1966, Bloomington and Normal, respectively, adopted ordinances for the purpose of requiring that franchises be obtained for offering CATV services in the communities. Discussions were also carried on in 1967 as to the possibility of a joint venture between Perfect Picture and GTEC. The record indicates, however, that from the outset, GTEC was in no way interested in a partnership arrangement with Perfect Picture and that GTI and GTEC kept this fact "confidential" in discussions with Perfect Picture.

by its consultant, Daniels and Associates.¹⁰ Although not satisfied with GTI's rates for channel service, Perfect Picture submitted application therefor, apparently in the hope of avoiding any franchise requirement which might be imposed upon CATV operations in the two communities. As previously noted (footnote 9), the communities adopted ordinances seeking to prohibit unfranchised operations and no action was taken by GTI on the service order. Nevertheless, GTI used the Daniels report in formulating and adopting a revised tariff which was issued on June 30, 1966. Negotiations between GTI and Perfect Picture continued up to and including May 10, 1968, but no agreement was reached either as to a pole attachment arrangement or to channel service before bids for franchises were submitted to the aforementioned communities or thereafter. It appears, however, that Perfect Picture hoped that by virtue of pressures from residents, and the good offices of its principals, it would be successful in negotiating a pole attachment agreement if it obtained the franchises.

14. In December, 1967, GTI informed GTEC that the cities of Bloomington and Normal were contemplating the adoption of ordinances for the grant of CATV franchises. GTEC informed the authorities of the cities in early January 1968 of its interest in establishing CATV systems and of its intention to submit bids. TeleCable first became interested in establishing such CATV systems in April, 1968. Both GTEC and TeleCable subsequently submitted bids, but it is believed that their activities and negotiations with

¹⁰ At that time Perfect Picture had a commitment from GTI that GTEC would not compete for the franchises in the Bloomington-Normal area; but by May 10, 1968, GTI considered the commitment no longer binding. One reason advanced for this changed position was the entry of other companies into competition. The record establishes, however, that the principal reason was the failure of Perfect Picture to make a definite commitment to lease channel distribution facilities from the telephone company. In fact, at a meeting between GTI and Perfect Picture on May 10, 1968, the president of GTI stated that if such a commitment were made, he would discuss with GTEC the possibility of withdrawing from competition.

respect thereto can better be considered in the light of the ordinances which were adopted by the communities.

15. In 1967, a CATV advisory committee was established composed of the city managers and city attorneys for both Bloomington and Normal, and a consultant (J. C. Barnard & Associates) was retained to advise the committee. Ordinances were adopted on April 1, 1968, by Normal and on April 8, 1968, by Bloomington, specifying in identical language the bidding requirements for franchises and terms and conditions for the construction and operation of cable television.

16. The ordinances also specified the standards for performance and the penalties for nonperformance. In Section 4, it was provided that a grant of the franchise did not relieve the franchise of the obligation of obtaining pole use agreements from utilities or others maintaining poles where it was necessary to make use of such poles, and to place facilities underground in some circumstances; and that in "all other areas, duplication of pole lines will be discouraged."¹¹ Section 7 required the franchisee to make application for and secure within 30 days of the award of the franchise any pole attachment agreements and other permits required for construction; to commence construction within 180 days of the award; to commence operation to approximately 30 per cent of the area within 360 days; and within 540 days to offer service to the "initial service area" (areas within the city limits with 50 habitable establishments per street mile). Subdivision (d) of Section 7 provides that the time for start of construction may be extended if delay is due to circumstances beyond franchisee's control, but other time limits are not thereby extended and delay not excused will be deemed a material failure to perform in which event the council may declare the franchise forfeited. Each applicant was required to pay

¹¹ In answer to an inquiry concerning the meaning of this provision, Tele-Cable was advised that it was intended to require the franchisee, if at all possible, to use the present facilities and to avoid a duplication of pole lines.

a filing fee of \$250; to post a bid bond of \$20,000.00 (which would be returned if the proposal were rejected); and to post a performance bond of \$200,000.00 along with the acceptance of the franchise award. Deadlines for the commencement of construction and operation were included in the ordinances to discourage delays of the type which the joint CATV committee found had been experienced in other communities in Illinois. One of the main concerns in evaluating bids was unquestionably the ability to commence service at an early date.

17. On May 3, 1968, the two communities gave "Notice of Bid", stating that CATV franchise applications would be accepted through May 29, 1968. Bids were submitted by GTEC, Perfect Picture and TeleCable. The communities' advisory committee had the matter under study and consideration for several months during which period members of the committee held individual and joint meetings with bidders.

18. TeleCable's bid, submitted May 29, 1968, contemplated an owned-system rather than a leasing arrangement because channel service had proved less desirable from a financial standpoint. Although an operator-owned system would ordinarily involve a pole attachment agreement.¹² TeleCable's president testified that he did not approach GTI or the power company prior to the submission of a bid because it had been his experience that the utility companies would not enter serious negotiations except with the holder of a CATV franchise.¹³ However, TeleCable condi-

¹² TeleCable considered that it would be economically feasible to set poles, but that it would not be feasible to do so in the downtown areas or for the entire system.

¹³ GTI had a policy at this time of entering no new pole attachment agreements with anyone. Whether or not TeleCable or Perfect Picture could have nonetheless obtained an agreement had either received the franchises is a matter of conjecture. It is interesting to note, however, that GTEC was also of the view that most utilities, power or telephone, will not negotiate with a CATV operator until he has been awarded a franchise.

tioned its bid upon the successful negotiation of a pole attachment agreement with the local telephone and electric utilities at reasonable rates. In making their recommendations to the city councils, the Barnard consulting firm and the members of the cities' advisory committee assessed a demerit against TeleCable's proposal for so conditioning its bid. Copies of the recommendations were furnished TeleCable which discussed the matter with the city authorities in August 1968. As a result of these discussions, TeleCable gained the impression that it might be authorized to set its own poles if it could not negotiate a pole attachment agreement. However, the record contains no adequate explanation of the apparent inconsistency between the position taken by the city authorities in the ordinance discouraging duplication of poles and the meaning previously attributed by the cities to that provision on the one hand and the contrary position taken in August, 1968. Also, the record is unclear as to whether TeleCable, if it failed to obtain a pole attachment agreement, intended to construct its entire system, including the setting of poles in the downtown area, since it previously had stated that this was not economically feasible. In any event, by a telegram on August 19, 1968, TeleCable removed the condition attached to its bid.

19. In seeking franchises within areas served by General System operating companies, GTEC had received opposition from some of the telephone companies of the General System prior to 1967. A document called the "Major Market Presentation" was prepared in 1967 to convince telephone companies to assist GTEC to obtain franchises within the major markets located in their respective areas, on the basis that the detriments to the telephone company would be outweighed by overall benefits to the General System. The language of the document could be adjusted to fit the particular market in which a presentation was made. The Bloomington-Normal area was one of these markets, and the telephone company (GTI) was cognizant of public opposition to its participation in the CATV

proposal due to service complaints regarding telephone service.

20. On March 18, 1968, GTEC addressed a letter to GTI requesting the opportunity to make a presentation in order to convince GTI to join GTEC in actively pursuing the Bloomington-Normal franchises. GTEC asserted that the project had "the support of the General System topside" and that many directors and members of the staff of the Service Cooperation would participate in the presentation. GTI made arrangements for the presentation on April 24, 1968. W. F. Stewart, C. N. Bristol and L. E. Thomas of GTEC were among those who attended.¹⁴ GTEC explained that if a CATV operator elected to utilize an operator-owned system and to install his own poles, no revenues to the General System would be forthcoming; that if the CATV operator elected to use an operator-owned system with pole attachment agreement, it would produce annual revenues of \$25,000; but that if the CATV operated accepted GTI channel service, it would produce annual revenues of \$158,000.00. GTEC asserted that if it were awarded the franchise, it would produce revenues to the General System in excess of \$158,000 in the fifth year, and "in looking at all of the General Telephone major market target cities, GT&E telephone operations could realize \$2.5 million in revenues annually from distribution systems created by GTEC's activity." The major market presentation stated that the goal was attainment of the Bloomington-Normal franchises and recommended three steps to attain that goal: (1) a total commitment by GTI to assist GTEC to obtain the franchise, including sufficient "time,

¹⁴ Wenton F. Stewart was National Accounts Sales Administrator in Service Corporation marketing department until May 12, 1965, when he becomes vice president and general manager of GTEC. Clarence N. Bristol was Manager, Community Relations for GTEC from February to November, 1968. From November, 1968 until June, 1969, he served as GTEC's division marketing manager. Mr. Lowell Thomas since January 1, 1968, has served as GTEC's regional manager at Fort Wayne, Indiana.

people and money;" (2) development of a comprehensive program to obtain information for GTEC on a continuing basis regarding "scheduling, facilities, other applicants, city government activity, etc."; and (3) employee education program to inform GTI employees of GTEC's role in providing this service. At this meeting, R. D. Griswold (GTI's marketing director) was established as coordinator for information-gathering by the telephone company, and for liaison work with GTEC.

21. Griswold thereafter directed a memorandum to all G.O. Department Heads to have employees under their supervision pass to him any information, however insignificant it might seem, regarding the subject of CATV in the Bloomington-Normal area, and advised them that analysis of the information would be left to GTEC. The record establishes that thereafter there was a continuing joint effort by GTI and GTEC to obtain these franchises; that GTI's files regarding negotiations with Perfect Picture were made available to C. N. Bristol, the GTEC employee responsible for prosecuting GTEC's application for these franchises;¹⁵ that Griswold agreed to contact city officials; that GTI invited city officials of Bloomington and Normal to visit Adrian, Michigan, where GTEC operated a CATV system; and that some city officials accepted and toured the CATV system at Adrian, Michigan, on May 22, 1968. Prior to the award of the franchises, GTI personnel consulted with GTEC personnel in the preparation of a detailed 4-phase plan for construction. Other bidders did not submit such a plan and this was also considered as a favorable factor in the recommendation of the joint CATV committee and consultant to the cities' councils that GTEC be awarded the franchises.

¹⁵ The respondents concede that the financial projections prepared for Perfect Picture by Daniels & Associates were turned over to GTI but they assert that these projections never came into the hands of GTEC; nor were they used by GTEC in preparing its bid. The record is in conflict in this regard, and we are unable to resolve these conflicting allegations.

22. After submission of the bids, but prior to action thereon, the Commission, in *General Telephone of California, et al.*, 13 FCC 2d 448, released June 26, 1968, determined that Section 214 certification would be required of common carriers for the construction and operation of channel distribution facilities to provide service to CATV operators. Since only GTEC had proposed to lease channel service from GTI, the cities met with GTEC on July 29, 1968, to consider the effect of that decision upon the latter's proposal. GTEC advised representatives of the cities that it still intended to use GTI's channel service offering but that the Commission's Section 214 decision would not prevent effectuation of timely service. GTEC represented that, should GTI encounter any difficulty in obtaining Section 214 certification, or in constructing the system, GTEC would build its own system.

23. On August 15, 1968, the three bidders attended a hearing before the councils of both cities for the purpose of explaining and justifying their proposals. The principal subject of inquiry was the time when construction and operation would be commenced, and each of the applicants was questioned with respect thereto. Perfect Picture had conditioned its bid upon FCC approval of carriage of distant signals, and it attempted to convince the councils that such a delay was justified. TeleCable acknowledged the possibility that some delay in the commencement of service might occur under the provision of Section 74.1105 of our Rules if a television station filed objections. TeleCable also indicated that if it were permitted to set its own poles, the absence of a pole attachment agreement would not delay the commencement of construction. Nevertheless, the question of pole attachment agreements appears to have been a matter of some concern at the meeting and James Malone, a representative of GTI, was questioned regarding the company's pole attachment policy. Mr. Malone stated that GTI would enter such an agreement with

other utilities. When he was reminded that a CATV is not a utility and was specifically asked if GTI would lease pole space to CATV companies, he took the position that he had no answer pro or con as to that. At the time, GTI had a definite policy against pole contact arrangements but this information was not disclosed to the councils by Mr. Malone. Since the cities desired to obtain CATV service at the earliest possible time, an indication that pole contact policy was unsettled could benefit GTEC. The councils reasonably could assume that GTI would be more flexible in its negotiations with affiliated GTEC than with unaffiliated, independent TeleCable or Perfect Picture.

24. In addition to the other matters considered at the meeting, a series of questions were directed to GTEC concerning the effect of the Commission's Section 214 decision on the commencement of service from that applicant since it was the only one proposing to use channel service from the telephone company. GTEC reiterated its position that the requirement for a certificate of public convenience and necessity with respect to the facilities to be constructed by GTI would have no adverse effect upon the applicant's compliance with the time schedules specified in the ordinances. GTEC's responses indicated that if any delay appeared likely, it would construct its own facilities and that such construction would not require Section 214 certification. Assurances were given by GTEC that no extension of time would be requested due to any delay in the disposition of GTI's Section 214 application. Although GTEC believed it could successfully negotiate a pole attachment agreement in the event of such a delay, it did not explore the matter because it believed, as did TeleCable, that most utilities would not discuss the subject until the CATV operator obtained a franchise.

25. In accordance with the recommendation of the advisory committee and the consultant, nonexclusive franchises were awarded to GTEC by Normal on September 16

and by Bloomington on September 23, 1968. The ordinances awarding the franchises specifically precluded any extension of time to obtain Section 214 certification from the Federal Communications Commission. On September 27 and October 1, 1968, GTEC accepted the franchises of Normal and Bloomington, respectively, and posted performance bonds in the amount of \$200,000.00 with each city.

26. Following the award of the franchises to GTEC, joint action on the part of GTI and GTEC continued. Coordinated construction plans were made in joint meetings with representatives of GTI, GTEC and the Jerrold Electronics Corporation. Initially, it was contemplated that GTI would have primary responsibility for construction of the distribution facilities but that the actual work would be subcontracted to Jerrold. Such a subcontract was deemed advisable because of Jerrold's experience in CATV installation and maintenance which was particularly important because time was a critical factor. Furthermore, GTI was concerned that it might not be permitted to complete construction if its Section 214 application were denied, and GTI and GTEC believed it would be easier to turn the project over to GTEC if Jerrold were doing the construction. However no contract was executed between GTI and Jerrold.

27. GTEC requested GTI to provide channel service by letter dated October 2, 1968, and on October 3, 1968, GTI submitted to the Commission its application for Section 214 authority to construct distribution facilities for Bloomington and Normal. In October, petitions to deny the said application were filed by TeleCable and Perfect Picture. Thereafter, GTEC advised GTI by letter dated March 28, 1969, that the delays in processing GTI's Section 214 application had made it impossible for GTEC to meet its franchise obligations to Bloomington and Normal, so that other arrangements for the construction of said facilities were necessary. GTEC withdrew its request for channel service

and on April 9, 1969, GTI wrote the Commission that it was withdrawing its certification application.¹⁶

28. A meeting between representatives of GTEC and of the Illinois Power Company took place on January 14, 1969,¹⁷ concerning the rental of pole space. Formal pole license agreements were entered into on February 20, 1969 for Bloomington and on April 11, 1969 for Normal. Rental was specified at \$4.75 per year per pole and each agreement was made "subject in all respects to the terms and provisions of the joint pole usage agreement" between the power company and GTI. The record is unclear as to whether GTI affirmatively concurred in such usage of the poles, but it certainly interposed no objection to the occupancy of any poles by GTEC. On the contrary, it appears that GTI affirmatively cooperated with GTEC by condoning temporary violations of its pole space in order to assist GTEC in meeting its deadlines for the commencement of operations.

29. On March 3, 1969, GTEC informed the two communities that due to delay on GTI's certification application it had decided to construct its own system rather than use channel facilities from GTI, and on March 17, 1969, it executed an agreement with Jerrold for construction of the cable systems. At the time of hearing approximately one million dollars had been expended or committed by GTEC for construction of the CATV systems.

30. The primary and basic issue presented in this proceeding is whether under the circumstances of this case the construction and operation of channel distribution facilities for the purpose of providing CATV service to the residents of Bloomington and Normal, Illinois, must be certified pursuant to the provisions of Section 214 of the

¹⁶ The Commission warned GTI on March 25, 1969, that any construction in Bloomington and Normal would be undertaken at the risk of later adverse action on the Section 214 application. GTEC nevertheless provided Jerrold with "Notice to Proceed" with the construction of Phase I on April 9, 1969.

¹⁷ A General System legal opinion in approximately January, 1969, held that pole attachment agreements between a General operating telephone company and GTEC were not advisable.

Communications Act, which provides in pertinent part as follows:

- (a) No carrier shall undertake the construction of a new line or of an extension of any line, or shall acquire or operate any line, or extension thereof, or shall engage in transmission over or by means of such additional or extended line, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line:—"

31. Unquestionably, such construction by GTI would have required prior certification. See *General Telephone Company of California, et al.*, 13 FCC 2d 448 (1968). In affirming the Commission's decision, the United States Court of Appeals for the District of Columbia Circuit¹⁸ stated: "As we view the record now before us and consider it in light of our own holdings and the relevant holdings of the Supreme Court it seems clear that as the outline of the CATV problem emerged the Commission acted within the scope of the Act and consistently with the broad purposes of the Act by treating its responsibilities as comprehensive and pervasive" (Slip Op., pp. 19-20). Respondents contend, however, that construction of the CATV distribution facilities under consideration is a project of GTEC and not GTI, that GTEC and GTI are separate corporations, that Section 214 is applicable only to construction by a common carrier, and that GTEC is not a common carrier.¹⁹ Re-

¹⁸ *General Telephone Company of California, et al.*, Case Nos. 22,106, etc., decided April 30, 1969. A petition for certiorari to the Supreme Court of the United States was filed July 18, 1969.

¹⁹ In support of this proposition, respondents cite *Philadelphia Television Broadcasting Co. v. Rollins Broadcasting Co.*, 1 FCC 2d 765, *aff'd sub nom. Philadelphia Broadcasting Co. v. Federal Communications Commission* 359 F. 2d 282 (D.C. Cir. 1966); *WSTV, Inc. v. Fortnightly Corp.*, 23 RR 184 (1962); and *Frontier Broadcasting Co.*, 24 FCC 251 (1958). While we held therein that operators of CATV systems are not common carriers, the factual situation in none of these cases is comparable.

spondents further urge that the issuance of any order which would preclude GTEC from operating the franchised CATV systems would be inconsistent with the position heretofore taken by the Commission that it has no intention of acting as a franchising agency, but would rely on state and local authorities to regulate rates, service areas of CATV systems, the award of CATV franchises and other similar matters. For the reasons set forth below these contentions must be rejected.

32. The fact that GTI and GTEC are separate corporate entities is not determinative. Where the ownership of stock is used to dominate and control the subsidiary in such manner and to such extent that it becomes a mere agency or instrumentality of the parent, the separate corporate entities may be disregarded.²⁰ Furthermore, separate corporate structures may be ignored where the purpose of a statutory scheme or regulation would otherwise be frustrated.²¹ The critical question, therefore, is whether the conduct of the General System corporations in the light of the relationship which exists among them requires that the legal concept of separate corporate identities be disregarded in order to preserve the integrity of Section 214 and to prevent the respondents from defeating the purpose and objective of the statutory provisions for certification.

33. In this case we find ample justification for piercing the corporate veil of the General System companies and for treating GTEC and GTI as a single operation which has undertaken the construction of communication facilities which are subject to the certification requirements of Section 214 of the Act. GT&E, through its wholly owned

²⁰ *United States v. Lehigh Valley E.R. Co.*, 220 U.S. 257, 31 S.Ct. 387 (1911).

²¹ *Daniel F. Kavanaugh v. Ford Motor Company*, 353 F.2d 710 (1965); *Mansfield Journal Co. v. Federal Communications Commission*, 180 F.2d 28 (1950).

polymaking subsidiary, Service Corporation, established policies for its subsidiary and affiliated corporations, and such policies were required to be followed absent substantial reasons for not doing so. One of the policies thus established was that every effort be made to see that channel service for CATV systems in areas served by General System telephone companies be provided by distribution facilities of the local telephone company. Pursuant to that policy, GTI undertook to discourage, if not outright deny, the leasing of pole space to prospective CATV operators in order to promote its own channel service. When it appeared that the only active prospective bidders for franchises in the cities of Bloomington and Normal preferred to construct their own distribution facilities, GTEC came in as a competing applicant for franchises from the said cities; and its proposal contemplated the leasing of channel facilities from GTI.

34. From the time the determination was made that GTEC would apply for the franchises, the two companies embarked upon a concerted and coordinated effort to obtain the franchises for GTEC. GTI undertook to arrange a tour of inspection of one of GTEC's CATV operations for the officials of the two cities. Plans for construction of the facilities were made at joint meetings of personnel from GTI and GTEC with Jerrold, the company which was to undertake the actual construction. Throughout this period, GTI made its personnel and its resources available to GTEC and it is manifest that GTI had made GTEC's goal of obtaining the Bloomington-Normal franchise its own.

35. In furtherance of this policy to retain in General System companies the control of communications cables going to homes and business establishments in areas served by General System telephone companies, an "escape" plan was provided in the event difficulty was encountered in obtaining Section 214 certification. GTEC would build "its

own" system. The same Jerrold which would have built the system for GTI would construct for GTEC. Financing would be provided by GT&E, the common parent of both GTI and GTEC. Thus, the General System, through the close cooperation of its affiliated corporations, would control the wires and distribution facilities in the cities served by GTI pursuant to the policy set by Service Corporation.

36. This "escape" plan was possible only because of the affiliation of GTI and GTEC and the manner in which advantage was taken of the affiliation. Despite the policy against pole attachment agreements in order to keep control of the CATV distribution facilities in the telephone company, GTI did not exercise the power of veto, which it possessed, over the placement of lines on poles owned by Illinois Power Company and occupied jointly by both. Not only did GTI fail to object to the use of the poles, but it cooperated to the fullest extent by authorizing violations of its own pole space in order to assist GTEC to meet the deadlines specified in the franchises for the commencement of service. Except for the corporate affiliation, GTI's conduct with respect to the use of the poles would have been contrary to its own best financial interest, since it was thereby deprived of income not only from a lease-back of channel facilities but from a rental of the poles. However, while it appears on the surface that a loss would be suffered, in fact this was true only to a limited extent. If permitted to operate, GTEC will derive an income from the CATV systems and, under the accounting practices and the method of dividend distribution adopted by the General Systems companies, GTI will benefit from that income. Moreover, any possible disadvantage to GTI was more than outweighed by the fact that operation by GTEC rather than an independent operator would better serve the long range overall policy of GT&E that control of the cable facilities in a community served by one of its operating telephone companies be retained by a General System company. Manifestly the alternative plan for construction by GTEC was

intended to achieve that objective while avoiding and evading the hearing which would be required under Section 214 of the Act by reason of the objections which had been interposed to certification. But that hearing to determine whether there may be any valid reasons for denial of authorization is required in the public interest, and an evasion of the statutory safeguards by the subterfuge practiced through the appearance of separate corporate entities cannot be tolerated. On the basis of the conduct and activities of the parties disclosed in this proceeding, we conclude that in order to maintain the integrity of Section 214 of the Act and to prevent defeat of the purpose and objectives of the statutory provisions, GTEC and GTI must be treated as a single operation, and that the construction of CATV distribution facilities in Bloomington and Normal in truth and in actual fact is a common carrier activity which is subject to the certification provisions of Section 214.

37. We further conclude that GTI took advantage of its monopoly position in the area and engaged in anticompetitive conduct which insured the award of the franchises to GTEC. The possible difficulty of leasing pole space on existing utility poles was a matter of serious concern to TeleCable and Perfect Picture. While each expressed the hope that through the pressure of public opinion or by other means, one of the utility companies could be prevailed upon to enter into a pole attachment arrangement, the possibility of refusal could not be ignored. At the meeting of August 15, 1968, with the councils of the cities, GTI's representative carefully avoided saying anything which would eliminate this matter as a ground of concern. He gave no assurance that the successful bidder would be able to arrange for space on the utility poles, but indicated instead that the company's policy was unsettled. On the other hand, GTEC had no cause for concern. While there was a possibility of delay due to the necessity for GTI to obtain certification, GTEC had an alternative which was not available to the competing bidders. Safe in the

knowledge that it could depend upon complete cooperation from the local telephone company with which it was affiliated,²² and proceeding on the assumption that Section 214 would not be applicable to construction by it pursuant to a pole attachment agreement with the power company, GTEC gave the city authorities an unqualified assurance that no delay in construction would result from the Commission's Section 214 decision. Moreover, GTEC's confidence in GTI's cooperation was well founded. No objections were interposed either to the placement of GTEC's lines on the poles or to the violation of GTI's pole space—a degree of consideration which neither TeleCable nor Perfect Picture reasonably could expect. The city fathers, who were anxious to obtain CATV service at the earliest possible time, hardly could fail to realize that while the road to service with GTEC might be smooth, that road with TeleCable or Perfect Picture could very well be strewn with numerous obstacles from the local telephone company whose affiliated corporation had been denied the bid. The record establishes that this “built-in advantage” of the relationship between GTI and GTEC was one of the matters which was considered by the councils in deliberating which applicant should receive the award.

38. We need not determine in this proceeding whether a policy of a telephone company against pole attachment agreements with CATV operators, in and of itself, constitutes an unlawful anticompetitive practice. That question

²² In addition to the other assurances of assistance set forth herein, GTI wrote to GTEC on May 3, 1968, stating that “We will do what we can to influence Bloomington and Normal councils in awarding the CATV franchise to your Company. We recognize the benefits to all of us in this business.” Also, some correspondence from Perfect Picture to GTI was turned over to GTEC. As previously stated (footnote 15, *supra*), the question of whether the financial projections prepared by Daniels and Associates were given to GTEC is not resolved on the record. Nevertheless, the potential for these projections to come into the hands of GTEC was present and illustrates just one more means whereby the affiliation between the carrier and the CATV operator may result in anticompetitive conduct to the detriment of the independent bidders.

is under consideration in other proceedings.²³ Further, while this case is obviously pertinent to the issue, we do not now definitely make any general policy determinations concerning the action to be taken where an affiliation exists between the telephone company and the CATV operator in a particular community since that matter is also under consideration in a separate proceeding.²⁴ We do find and conclude, however, that the attempt to maintain the appearance that GTEC was treated the same as any other CATV operator in regard to pole attachment agreements is contrived and artificial. The course of conduct followed by GTI unquestionably was intended to confer, and did confer, upon GTEC a definite advantage over the competing applicants for CATV franchises in Bloomington and Normal. While we do not propose to interfere with the discretion of the local authorities in awarding franchises, we cannot abdicate our responsibilities for enforcement of the provisions of the Communications Act or permit a common carrier to engage in unlawful, unfair or unreasonable acts of discrimination in connection with its operations. Section 202(a) of the Act provides as follows:

"It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services, for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage."

²³ See *California Water and Telephone Co.*, 6 FCC 2d 440 (1967), consolidating for hearing proceedings involving issues going to pole attachment practices of telephone companies (6 FCC 2d 433, 434 and 441). See also, *Better T.V., Inc., et al.*, FCC 69-819, released August 7, 1969.

²⁴ *Notice of Inquiry and Notice of Proposed Rule Making* in Docket No. 18509, FCC 69-314, released April 4, 1969. Even assuming that a telephone company may lawfully adopt a policy against pole attachment arrangements, it may not use its control over the poles to gain a competitive advantage for its affiliate or to place the unaffiliated competitor at a disadvantage. See *United States v. Griffith*, 334 U.S. 100, 68 S. Ct. 941 (1948).

Thus the same facts, to which respondents have had a full opportunity to address themselves, establish conduct in violation of the above section. The disadvantages suffered by competitive bidders, and the advantages enjoyed by GTEC flow directly from GTI's position as a common carrier with its own existing poles in the Bloomington-Normal area, and with contractual relations with Illinois Power Company in regard to other poles in these communities. The matter is one, therefore, which requires our attention even though it affects the awards of franchises by the local communities.

39. Respondents also contend that we were in error in placing the burden of proof on respondents with respect to the interrelationships of the respondent companies, the circumstances surrounding the withdrawal of GTI's Section 214 application, and GTEC's plans and actions with respect to construction or operation of CATV facilities in Bloomington and Normal. These matters lie uniquely within the knowledge of respondents, and the Commission is impowered to require persons engaging in activities subject to provisions of the Communications Act to provide such full and complete information concerning its management and operations as is necessary to enable the Commission to perform its duties. See *Section 218 and 219 of the Communications Act*. Our order did nothing more than require respondents to submit information which the Commission is entitled to have.

40. On July 30, 1969, respondents filed a request for oral argument. Oppositions to the request were filed on July 31, 1969, by the Chief, Common Carrier Bureau, and on August 1, 1969 by TeleCable. Both parties, however, expressed a desire to participate in oral argument in the event respondents' request is granted. Comments were also filed by the CATV Task Force on August 5, 1969. The record in this proceeding is an extensive one. With the exception of Perfect Picture, all parties have submitted

proposed findings of fact and conclusions of law. We believe that no useful purpose would be served by hearing oral argument, and the request will be denied.

41. In view of the course of conduct pursued by the General System companies, an order directing the said companies to cease and desist from the construction or operation of any CATV channel facilities in Bloomington and Normal, Illinois, until a certificate of public convenience pursuant to Section 214 of the Act is received from the Commission is required in the public interest. In our view, the fact that the performance bonds filed by GTEC may be forfeited as a result of our order creates no equities in favor of the respondents. The filing of the bonds was the means by which respondents took unfair advantage of GTI's favored position as a common carrier in the communities involved. It was the assurance of expeditious commencement of service supported by the bonds which enabled GTEC to eliminate its competition and to obtain awards of the franchises. We cannot now allow respondents' wrongdoing to further accrue to their benefit by advancing the possible financial loss through forfeiture of the bonds as a reason for withholding the issuance of a cease and desist order. The financial risks in posting performance bonds were undertaken here with a full understanding on the part of respondents that Section 214 was under consideration in *General Telephone of California et al., supra*, and that the provisions of Section 214 would be equally applicable to the Bloomington-Normal situation. They now contend that Section 214 requirements must give way lest they suffer the consequences of their own acts. We find that such conduct generates no equities in favor of these respondents, and the contentions are rejected.

42. ACCORDINGLY, IT IS ORDERED, That, in view of the violations of the statutory provisions referred to herein, General Telephone Company of Illinois, GT&E Communications, Inc., and General Telephone and Electronics Corporation CEASE AND DESIST from the construction or opera-

tion of CATV distribution facilities in Bloomington or Normal, Illinois, until a certificate of public convenience and necessity pursuant to Section 214 of the Communications Act is obtained;²⁵

43. IT IS FURTHER ORDERED, That the unopposed motions to correct the transcript filed on July 16, 1969, by the Chief, CATV Task Force, and on July 17, 1969, by TeleCable Corporation ARE GRANTED.

44. IT IS FURTHER ORDERED, That the respondents' request for oral argument filed on July 30, 1969, IS DENIED.

45. IT IS FURTHER ORDERED, That the Secretary of the Commission send copies of this Decision to the City Councils of Bloomington and of Normal, Illinois.

FEDERAL COMMUNICATIONS COMMISSION

BEN F. WAPLE
Secretary

²⁵ In any Section 214 certification proceeding, the record herein and our findings based thereon with respect to the anticompetitive conduct in which the General System companies engaged will be taken into consideration. Consequently, the applicant will be faced with a very heavy burden to establish that the issuance of a certificate of public convenience and necessity for the construction of channel distribution facilities in Bloomington and Normal for a CATV operated by GTEC, GTI or another General System company would be in the public interest.

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554

FCC 69-969
36799

Docket No. 18538

File No. SR-3695-N

In the Matter of

PETITION BY TELECABLE CORPORATION TO STAY CONSTRUCTION OR OPERATION OF A CATV SYSTEM IN BLOOMINGTON AND NORMAL, ILLINOIS, BY GT&E COMMUNICATIONS, INC.

Order

Adopted: September 10, 1969; Released: September 10, 1969

By the Commission:

1. In a Decision released September 5, 1969, FCC 69-956, we found that respondents General Telephone Company of Illinois, GT&E Communications, Inc. and General Telephone and Electronics Corporation had violated Section 202(a) and 214 of the Communications Act, and we ordered them to cease and desist from the construction or operation of CATV distribution facilities in Bloomington and Normal, Illinois, until Section 214 had been complied with.

2. We have now been informed that respondents and petitioner TeleCable Corporation hope to consummate a sale of the CATV systems and a transfer of the franchises to TeleCable.¹ The Bloomington City Council has already approved the franchise transfer and the City Attorney of Normal has indicated that there is no legal obstacle to Normal's approval when that city's Council meets on September 15. Because early commencement of CATV service

¹ The sale of the CATV systems is to be at cost, and respondents propose to retain an option to repurchase in the event they are successful in their appeal of the September 5 cease and desist order (*GT&E Communications, Inc. v. F.C.C.*, C.A.D.C., Case No. 23455).

to Bloomington and Normal by a qualified operator would be in the public interest, and for other equitable considerations, it appears desirable to stay the effect of the cease and desist order for a period of three weeks in order to permit the respondents and TeleCable to complete negotiations on the proposed sale.

3. ACCORDINGLY, IT IS ORDERED, That the effect of the cease and desist order in this proceeding issued September 5, 1969, Is STAYED for a period not to exceed three weeks from the adoption date of this order; provided further that in the event the Normal City Council does not act to approve the franchise transfer at the meeting of September 15, 1969, the Commission reserves the right to take action terminating the stay and making its order effective upon 48 hours notice.

FEDERAL COMMUNICATIONS COMMISSION

/s/ BEN F. WAPLE
Ben F. Waple
Secretary

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554

G
FCC 69-1036
37107

Docket No. 18538
File No. SR-3695-N

In the Matter of

PETITION BY TELECABLE CORPORATION TO STAY CONSTRUCTION OR OPERATION OF A CATV SYSTEM IN BLOOMINGTON AND NORMAL, ILLINOIS, BY GT&E COMMUNICATIONS, INC.

Order

Adopted September 24, 1969; Released: September 26, 1969
By the Commission:

Commissioner Johnson concurring in the result;
Commissioner H. Rex Lee absent.

1. By an Order, FCC 69-969, released September 10, 1969, the Commission stayed the effectiveness of the cease and desist order issued on September 5, 1969 (FCC 69-956) in this proceeding for a period not to exceed three weeks. The Commission now has before it the joint motion filed by TeleCable Corporation (TeleCable) and GT&E Communications, Inc. (GTEC), requesting that the Commission issue an order continuing the present stay of the effectiveness of the September 5, 1969, order in the above matter pending a final decision of the cause on judicial review (Case No. 23,455, D.C. Circuit).

2. The motion recites the prior agreement to dispose of the CATV system to TeleCable, the good faith negotiations to implement that agreement, the reasons why a present transfer of the properties to TeleCable cannot be accomplished, and the new agreement whereby GTEC, if it does not prevail upon appeal, binds itself to sell to TeleCable, at a price which will not result in any financial benefit to

GTEC (and indeed, it is pointed out that GTEC will, if it is unsuccessful on appeal, suffer a financial penalty since the CATV system will sustain losses in its early operation). In view of the unusual circumstances here present, the Commission believes that continuance of the stay is appropriate, upon the express condition that if the Commission's order is sustained upon appeal, GTEC will divest itself of all ownership and control of the CATV system, in accordance with its representations, and that such divestiture will be accomplished within fourteen (14) days after the issuance of such court determination.

3. ACCORDINGLY, IT IS ORDERED, That the effectiveness of the cease and desist order issued in our Decision in this proceeding, FCC 69-956, released September 5, 1969, Is STAYED, pending a final decision on judicial review.

FEDERAL COMMUNICATIONS COMMISSION

/s/ BEN F. WAPLE
Ben F. Waple
Secretary

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Case No. 23,455

GT&E COMMUNICATIONS INC., *Appellant*

v.

FEDERAL COMMUNICATIONS COMMISSION, *Appellee*

Notice of Appeal

GT&E Communications Inc. hereby gives notice of its appeal, pursuant to section 402(b) of the Communications Act, 47 U.S.C. § 402(b), from a Decision of the Federal

Communications Commission released September 5, 1969 in Docket No. 18538, a copy of which is attached hereto as Exhibit 1.

The Appellant asks this Court to enjoin, set aside, annul and suspend the Decision.

Respectfully submitted,

ARNOLD & PORTER

By: DAVID H. LLOYD

1229 Nineteenth Street, N.W.

Washington, D. C. 20036

Attorneys for Appellant

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SUPPLEMENTAL APPENDIX

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23,455

GT&E COMMUNICATIONS, INC.,

Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,

Appellee.

TELECABLE CORPORATION

Intervenor.

ON APPEAL FROM DECISION OF
THE FEDERAL COMMUNICATIONS COMMISSION

United States Court of Appeals
for the District of Columbia Circuit

FILED JUL 8 1970

Nathan J. Paulson
CLERK

JAY E. RICKS

MARVIN J. DIAMOND

815 Connecticut Ave., N.W.
Washington, D. C. 20006

Attorneys for Intervenor

Of Counsel:

HOGAN & HARTSON
815 Connecticut Avenue, N.W.
Washington, D.C. 20006

S U P P L E M E N T A L A P P E N D I X

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EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

WILLIAM C. ROWLAND

[220] * * *

Q Did the Ives group at this same meeting express some concern that confidential financial projections and analyses which they had given to the Illinois company were now being used to their disadvantage? A Yes. This was the source of their claims of unethical practices, poor business tactics or whatever you might call it.

Q What was your response to that claim? A This was the major concern that I had in this whole matter. My response to them was that my people had advised me that this information served no useful purpose, neither to General Telephone or to G-Tech, and that I felt their concern or claims were not justified.

Q Now, when you say "my people," who did you speak to
[221]

concerning this alleged unethical conduct? A I think it probably was with Mr. Ross.

Q And did Mr. Ross indicate that some information was passed on by General Telephone Company of Illinois to GT & E Communications? A I don't know if Mr. Ross told me or Mr. Ives, but during the course of it, I certainly was advised that this had happened.

* * * * *

TIMOTHY R. IVES

[378] * * *

A Yes, the General Telephone people indicated to both myself and Mr. Merwin that they might invite their subsidiary or sister company into the market.

Q Did they do this in connection with any discussions that you were having over the tariff lease agreement? A As I remember, the first comment about it, and these may have been directly from the General Telephone people or Mr. Merwin, was that if we did not desire a lease they would consider calling in their CATV affiliated company.

Q By lease, do you mean a channel service offering? A The full system.

* * * * *

REX A. BRADLEY

[435] * * *

Q Now I gain from your testimony that you are basing your bid or were you not basing your bid on the use of telephone and power facilities for the connection of your cable and the construction of the system? A We based our bid on the assumption we would use telephone and power company poles.

Q You do this in all of your bids? A All of them.

Q Prior to filing a CATV application, do you or do you not typically visit the utility companies which own the local poles to determine their availability? A No, we typically do not visit them. The reason being that most of them have an established policy and none of them are in a position prior to the time that we receive a franchise to give us a contract. The most that could be obtained would be an oral statement from some individual that they might give us a contract or that they might not give us a contract or that they might not give us a contract and in either case the oral statement

[436]

cannot be considered to be binding.

So, only when the franchise is in hand can we expect to really do business with them.

Q Let us assume, Mr. Bradley, for the purposes of your testimony that you have a franchise and that you intend to utilize utility company poles. In your experience at that particular point in time can you typically expect to get an agreement from the local utility companies for the use of their poles? A Yes, usually so. The first thing we do after we get the franchise is to contact the power company and phone company and make application for a pole contract. At this time the procedures are similar, they differ only in detail. The companies require a submission from us of a copy of the franchise and the area in which we expect to operate and our request for pole attachment agreements in the areas in which we expect to operate.

Q Have you ever experienced any substantial delays or significant delays in getting a contract after you had a franchise? A Yes, there are always great delays. One that we are pursuing at the moment, Racine, Wisconsin, has been over six months since we applied for the pole contract to the telephone company and the relationships there have been very pleasant, extremely cooperative on the surface, but they just haven't gotten around to giving us the contract.

This is not at all unusual. * * *

* * * * *

[447]

Q Why don't you keep a copy of the ordinance in front of you and continue your discussion of why you removed the condition from your bid? A One of the people from my office visited the two cities to obtain an interpretation of Section 4(j) as well as other provisions of the franchise ordinance and came away with the understanding that it would be virtually impossible for us to obtain permission to set our own poles.

In a subsequent telephone conversation it was indicated by spokesmen for the two towns that if it were essential that we do so in order to wire the city, that permission could be obtained to set our own poles. Based on this advice that we could set our own poles where we could not obtain pole attachment agreements, we removed the restriction from the original bid submission and indicated that all qualifications were removed if we could set our own CATV poles where necessary.

Q Was it your intent at that point if awarded the franchise, to set your own poles or to attempt to negotiate pole attachment agreements? A Well, we would have attempted to negotiate pole attachment agreements rather than set our own poles, because the setting of our own poles is often a distasteful exercise so far as the residents of the city are concerned, even though the city will permit it.

The residents in an area just don't like additional

[448]

poles cluttering up their residential areas. We would hope that the telephone company or any owner of poles would be pressured through his own conscience and through public opinion into the granting of a pole attachment agreement.

* * * * *

TELECABLE EX. 142.6-8

[6] * * *

Q Did you attend the hearing before the joint Councils of Bloomington and Normal?

A Yes, sir.

Q Were you the only representative of GTI at that meeting? A I believe so.

Q Were you called upon at any point in the hearing to make representations on behalf of GTI? A Yes, sir, I was.

Q Were you asked whether or not your company had a policy of leasing pole space as distinguished from a channel offering for CATV? A Yes, sir.

Q Did you state your Company's policy? A Yes, sir.

Q And what did you state that policy to be? A That we leased space to or entered into pole contracts, pole lease contracts, pole space

[7]

contracts with other utilities.

Q And were you asked whether you would lease space to a non-utility? A I don't know what question I was asked in that regard.

Q You did know, did you not, that a CATV company was not a utility? A Yes, sir.

Q And you did know that the hearing was involving the franchising of CATV companies, did you not? A Yes, sir.

Q And did you state whether or not your Company would lease pole space to CATV companies? A I took the position that I had no answer pro or con. I would have to have a more definitive question put to me than a very broad generality. Our Company has a position of no pole contact arrangements.

Q Wouldn't that have been a very responsive answer to the questions that were asked?

A This is a matter of interpretation. It is a very broad subject that requires more than

[8]

a simple answer.

Q I don't mean to quibble with you, Mr. Malone, but I think that is a simple answer: That your company would not lease pole space to CATV companies.

MR. LLOYD: You will have an opportunity to argue that.

MR. RICKS: I am suggesting that when Mr. Malone was queried by the City Councils, there was a simple answer to the question and I wonder why that answer wasn't given.

MR. LLOYD: He disagrees with you.

MR. RICKS: Why don't you let the witness answer?

MR. LLOYD: He has, Mr. Ricks.

MR. RICKS: Do you feel that you have answered the question, Mr. Malone?

A Yes, sir, I do.

Q Did there come a time, Mr. Malone, when you were advised that G-Tec was no longer going to seek a channel service from GTI? A Yes, sir.

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BRIEF FOR APPELLEE

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23,455

GT&E COMMUNICATIONS INC.,
Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,
Appellee,

TELECABLE CORPORATION,
Intervenor.

ON APPEAL FROM A DECISION OF THE
FEDERAL COMMUNICATIONS COMMISSION

HENRY GELLER,
General Counsel,

JOHN H. CONLIN,
Associate General Counsel,

STUART F. FELDSTEIN,
Counsel.

United States Court of Appeals
for the District of Columbia Circuit

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CLERK

Federal Communications Commission
Washington, D. C. 20554

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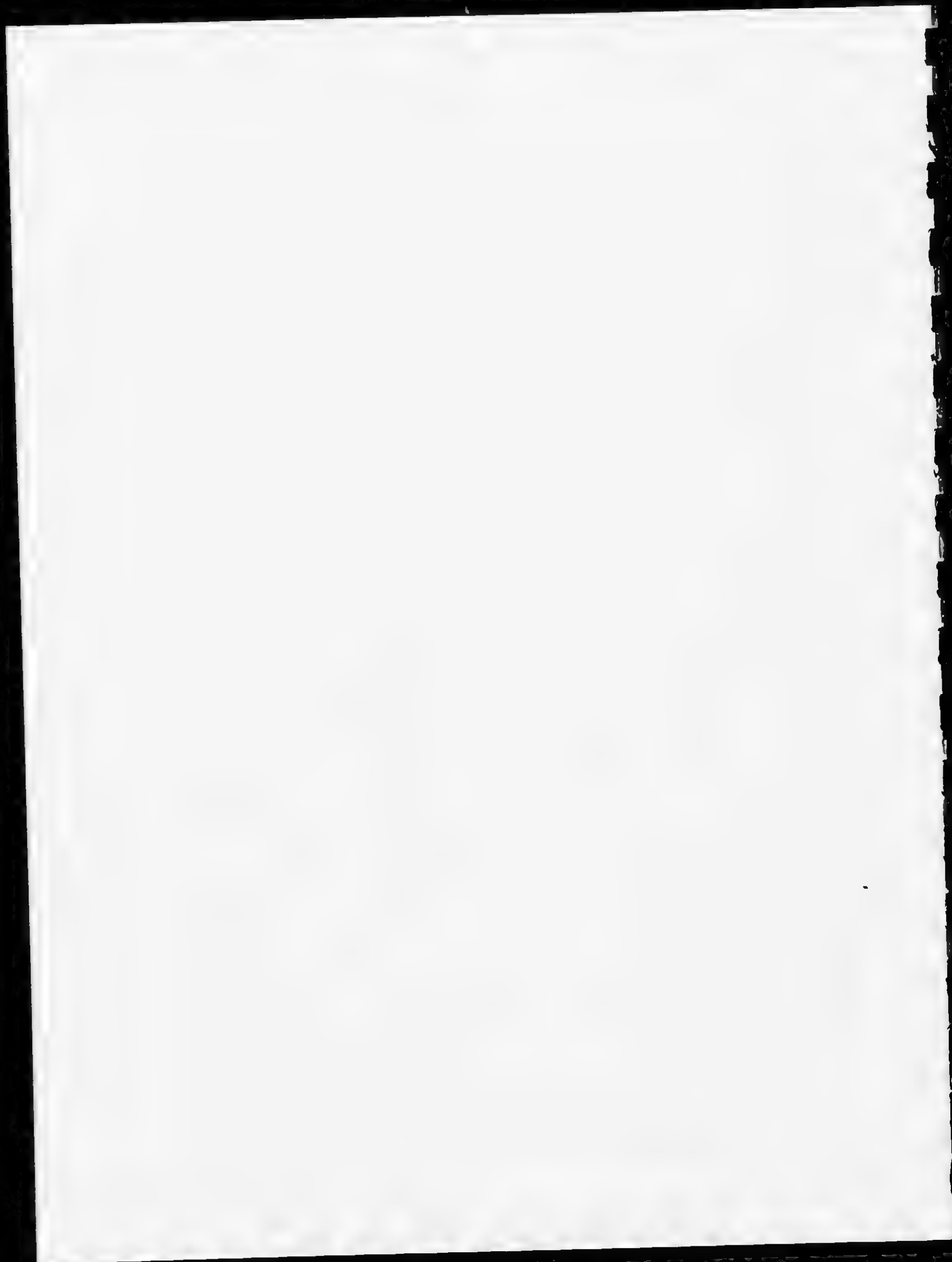


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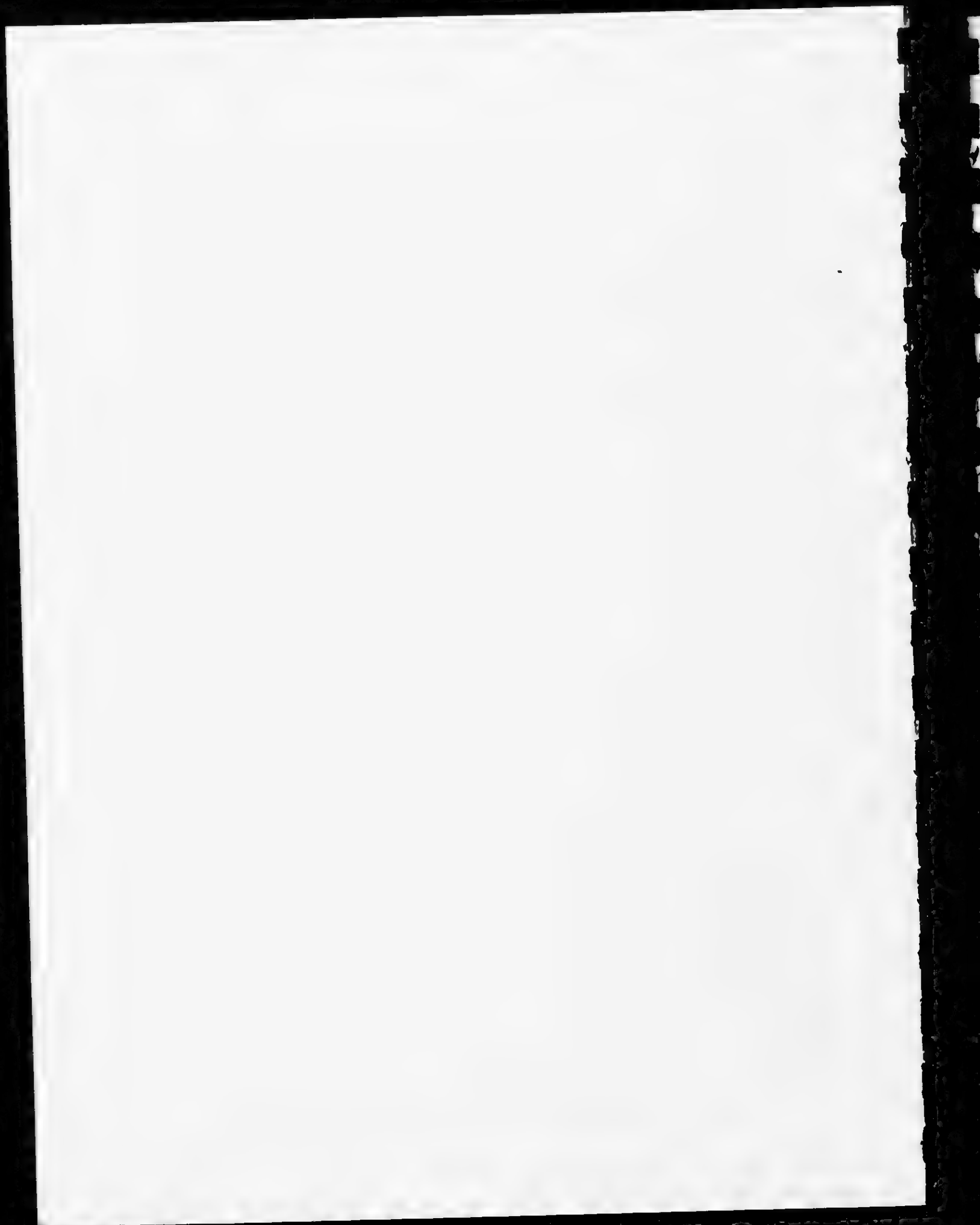
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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23,455

GT&E COMMUNICATIONS INC.,
Appellant

v.

FEDERAL COMMUNICATIONS COMMISSION,
Appellee,

TELECABLE CORPORATION,
Intervenor.

ON APPEAL FROM A DECISION OF THE
FEDERAL COMMUNICATIONS COMMISSION

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF ISSUES PRESENTED*

1. Whether the Commission correctly determined that a certificate of public convenience and necessity is needed for construction of the CATV facilities to be used by GTEC.

2. Whether the Commission was correct in concluding, on the basis of the evidence of record, that GTEC and GTI must be treated as a single operation in order to prevent the purpose and objective of Section 214 from being defeated.

3. Whether the Commission correctly allocated the burden of proof.

*/ This case has not previously been before this Court.

COUNTERSTATEMENT OF THE CASE

This case involves an appeal from a Commission decision released September 5, 1969 (J.A. 570-600), which held in essence that a certificate of public convenience and necessity was required before CATV distribution facilities could be constructed and operated by appellant GT&E Communications Inc. (GTEC) in Bloomington and Normal, Illinois. The appeal has been brought under Section 402(b)(7) of the Communications Act of 1934, 47 U.S.C. 402(b)(7). In view of the unique situation presented in this case and the somewhat argumentative nature of GTEC's statement of the case, we believe that a counterstatement would be of value to the Court.

1. Background.

This Court is familiar with the history of CATV regulation up to and including the adoption of the Second Report and Order in Docket No. 15971, et al., 2 F.C.C. 2d 725 (1966). In the Second Report and Order the Commission asserted jurisdiction over all CATV systems and adopted various rules governing the distribution of television signals. See Subpart J of Part 74 of the Commission's Rules, 47 CFR 74.1001-74.1119. This assertion of jurisdiction was affirmed by the Supreme Court in United States v. Southwestern Cable Co., 392 U.S. 157 (1968).

In the early stages of CATV development, distribution facilities were usually constructed by the CATV operator and operated as an integral part of the system. Increasingly, however, common carriers in the communications field have offered to provide distribution facilities for hire. These so-called "channel service" offerings are separate and distinct from other communications service offered by the carriers. In 1966 the Commission initiated a proceeding in this area in which certain operating companies were directed to file tariffs covering CATV channel service offerings. 4 F.C.C. 2d 257. Later on these proceedings were expanded to include questions such as the applicability of Section 214 of the Communications Act. 6 F.C.C. 2d 440. Subsequently, the Commission separated the question of the applicability of Section 214 and a decision was rendered on June 26, 1968, which held essentially that CATV channel service furnished by the carriers constituted "a common carrier undertaking" and that Section 214 certificates of public convenience and necessity were therefore required for construction of the necessary lines. General Telephone Co. of California, 13 F.C.C. 2d 448 (1968). Relying largely on the Supreme Court's opinion in United States v. Southwestern Cable Co., supra, this Court unanimously affirmed the Commission's decision. General Telephone Co. of California v. F.C.C., ___ U.S. App. D.C. ___, 413 F.2d 390 (1969), cert. denied 396 U.S. 888.

In that decision the Commission discussed remedies for situations where construction had begun without the required certification, giving particular consideration to situations where the common carriers and the CATV were linked together by corporate ties (13 F.C.C. 2d at 462-463):

Cease and desist orders are called for in this proceeding and we shall issue such orders which, as we indicated when we designated this adjudicatory proceeding for hearing, will be "tailored to the particular factual situation" (7 FCC 2d at 576). There are a number of pertinent factors to be taken into account in fashioning the cease and desist orders in each case. . . .

A factor militating against relief of a common carrier from the cease and desist order to be entered herein is the existence of an affiliation between the CATV operator and the telephone company serving the particular community, such as a parent-subsidary relationship or where both are under common control. By reason of its control over utility poles, or other local advantages resulting from its status as an existing common carrier in the community, the telephone company is in a position to preclude or to substantially delay an unaffiliated CATV system from commencing service and thereby eliminate competition. Furthermore, construction by a telephone company for an affiliated CATV operator calls for careful scrutiny on the part of the Commission in order to insure against wasteful duplication or unnecessary construction. Where such an affiliation exists, therefore, it is doubtful that any sufficient equitable basis exists for according permanent relief to the carrier, and we would be inclined to deny such relief absent a showing of specially meritorious circumstances requiring a contrary conclusion in the public interest.

2. This proceeding.

GTEC holds franchises to provide CATV service in Bloomington and Normal, Illinois, having been chosen by those municipalities over two other applicants, TeleCable Corp. and Bloomington-Normal Perfect Picture Co. Its proposal originally contemplated that the signals would be distributed through facilities constructed by an affiliated company, General Telephone Co. Illinois (GTI), and leased to GTEC.

The aforementioned Section 214 decision was issued while the applications for the franchises in Bloomington and Normal were pending. In October 1968 GTI filed an application with the Commission for a Section 214 certificate (J.A. 274-279), one of many such requests received by the Commission during the Fall of 1968. It was opposed by TeleCable and Perfect Picture (J.A. 285-332), the gravamen of their complaint being as follows: In the Spring of 1968, three companies -- TeleCable, Bloomington-Normal Perfect Picture and GTEC -- applied for local CATV franchises in Bloomington and Normal. Prior to and in connection with these applications, Perfect Picture had sought an agreement from GTI, the local telephone company, to rent space on telephone company poles, a substantial portion of which are jointly used or controlled with

the Illinois Power Company, for their proposed CATV facilities. It was alleged that GTI refused to lease such space; that it would offer only to provide CATV facilities under its established tariff provisions; and that if TeleCable and Perfect Picture were to accept this offer, General would have its affiliate, GTEC, withdraw from the local CATV franchise competition.

GTI thereupon sought to withdraw its request for a certificate of convenience and necessity, with construction of the system being undertaken by GTEC, its affiliate.^{1/} However, acting on the allegations of TeleCable and Perfect Picture, the Commission on May 5, 1969, issued an order directing both the telephone company and its CATV affiliate to show cause why they should not be ordered to cease and desist from "construction, operation and offering of CATV facilities in Bloomington and Normal" (J.A. 65-71). As set forth in the order, the hearing issues related generally to eliciting the facts and circumstances surrounding the franchise contest so that it could be determined whether GTEC and GTI are subject to Section 214 of the Communications Act in this case, whether GTEC's actions were anticompetitive or otherwise contrary to the

^{1/} To distribute the necessary lines of cable GTEC secured pole attachment agreements apparently similar to those which TeleCable and Perfect Picture had been unable to obtain.

public interest, and therefore whether GTEC should be ordered to cease its CATV activities in Bloomington and Normal, or whether any action should be taken against it. In the interest of expedition, the Commission ordered immediate certification of the record to it by the examiner at the conclusion of the hearing, with proposed findings to be filed 20 days after the closing of the record.^{2/}

Shortly thereafter TeleCable requested the Commission to issue an order directing that the status quo be maintained pending the hearing, alleging that GTEC was advertising that service would commence in a substantial area of Bloomington in June. Reasoning that it would be undesirable and contrary to the public interest to have members of the public subscribe to a service which might shortly be withdrawn, the Commission on May 29, 1969, directed petitioner not to commence CATV operation in Bloomington or Normal pending the outcome of the hearing (J.A. 71-74). An appeal of this order to the United States Court of Appeals for the Seventh Circuit (Case No. 17,785) was dismissed as moot by the court prior to a decision.

^{2/} In point of fact, the record was closed on July 8, the record was then certified to the Commission, and proposed findings were filed on July 28.

On September 5, 1969, the Commission released its decision in this case (J.A. 570-600). The Commission first found that the General Telephone and Electronics Corporation (GT&E) is a publicly held corporation which functions largely as a holding company for some 115 corporations each of which is either a subsidiary of GT&E or of one of its wholly-owned subsidiaries. GT&E Service Corporation is a non-operating subsidiary which provides various services, including legal and consultative, and sets major policies for the operating subsidiaries. The latter, in turn, must justify any departure from the Service Corporation's policy recommendations. A close identity of officers and directors with the parent makes the Service Corporation the coordinating arm of all the subsidiaries (J.A. 574-575).

GTEC is a wholly-owned operating subsidiary of GT&E whose function is to engage in furnishing CATV service directly to individual subscribers. In existence since 1965, it holds CATV franchises in various areas, both inside and outside areas served by General System telephone companies. Here, too, there is a close identity of officers and directors with GT&E and the Service Corporation (J.A. 575-576).

GTI is the telephone company serving the Bloomington-Normal area. 90% of its stock is held by GT&E. Although no identity of

directors or officers exists, the Commission found that the policy-setting Service Corporation exerts a great deal of influence, and that "the policy of GTI regarding pole line attachment agreements with CATV operators and the conduct and activities of the bidders for the Bloomington-Normal franchises must be viewed in the light of the corporate relationships of the General System here involved." (J.A. 576.)

The Commission then went into a detailed recitation of the facts surrounding the Bloomington-Normal situation (J.A. 576-590). In summary the Commission found that one of the policies established by the Service Corporation was that every effort be made to see that channel service for CATV systems in areas served by General System telephone companies be provided by distribution facilities of the telephone company. GTI, pursuant to this policy, discouraged the leasing of pole space to prospective CATV operators in order to promote its own channel service. When it appeared that both of the prospective franchise bidders in Bloomington and Normal wanted to construct their own distribution facilities, GTEC entered a competing application which originally contemplated the leasing of channel facilities from GTI. A detailing of the conduct and activities of GTEC and GTI showed that the two companies worked very closely to obtain the franchises for GTEC and to preclude the

other bidders from succeeding. Thus the Commission found (J.A. 593):

From the time the determination was made that GTEC would apply for the franchises, the two companies embarked upon a concerted and coordinated effort to obtain the franchises for GTEC. GTI undertook to arrange a tour of inspection of one of GTEC's CATV operations for the officials of the two cities. Plans for construction of the facilities were made at joint meetings of personnel from GTI and GTEC with Jerrold, the company which was to undertake the actual construction. Throughout this period, GTI made its personnel and its resources available to GTEC and it is manifest that GTI had made GTEC's goal of obtaining the Bloomington-Normal franchises its own.

Further, the circumstances surrounding GTI's attempted withdrawal of its Section 214 application and the ensuing plan for GTEC to build its "own" system led the Commission to conclude as follows (J.A. 594-595):

This "escape" plan was possible only because of the affiliation of GTI and GTEC and the manner in which advantage was taken of the affiliation. Despite the policy against pole attachment agreements in order to keep control of the CATV distribution facilities in the telephone company, GTI did not exercise the power of veto, which it possessed, over the placement of lines on poles owned by Illinois Power Company and occupied jointly by both. Not only did GTI fail to object to the use of the poles, but it cooperated to the fullest extent by authorizing violations of its own pole space in order to assist GTEC to meet the deadlines specified in the franchises for the commencement of service. Except for the corporate affiliation, GTI's conduct with respect to the use of the poles would have been contrary to its own best financial interest, since it was thereby deprived of income not only from a lease-back of channel facilities but from a rental of the

poles. However, while it appears on the surface that a loss would be suffered, in fact this was true only to a limited extent. If permitted to operate, GTEC will derive an income from the CATV systems and, under the accounting practices and the method of dividend distribution adopted by the General System companies, GTI will benefit from that income. Moreover, any possible disadvantage to GTI was more than outweighed by the fact that operation by GTEC rather than an independent operator would better serve the long range overall policy of GT&E that control of the cable facilities in a community served by one of its operating telephone companies be retained by a General System company. Manifestly the alternative plan for construction by GTEC was intended to achieve that objective while avoiding and evading the hearing which would be required under Section 214 of the Act by reason of the objections which had been interposed to certification.

There was never any question that construction of the channel distribution facilities by GTI would have required Section 214 certification. The vital issue, however, is whether under the circumstances of this case the construction of the CATV distribution facilities is an independent project of GTEC or simply a subterfuge to avoid a possible Section 214 hearing on GTI's application. On the basis of the facts found to exist in this case, the Commission found "ample justification" for treating GTEC and GTI as a single operation for the purpose of CATV construction in Bloomington and Normal (J.A. 592). The Commission

held (J.A. 595):

. . . in order to maintain the integrity of Section 214 of the Act and to prevent defeat of the purpose and objectives of the statutory provisions, GTEC and GTI must be treated as a single operation, and . . . the construction of CATV distribution facilities in Bloomington and Normal in truth and in actual fact is a common carrier activity which is subject to the certification provisions of Section 214.

These same facts also led the Commission to conclude that GTI engaged in anticompetitive conduct in the market "which insured the award of the franchises to GTEC." (J.A. 595). Such conduct resulted in a finding that Section 202(a) of the Communications Act had been violated,^{3/} the Commission stating that (J.A. 598):

The disadvantages suffered by competitive bidders, and the advantages enjoyed by GTEC flow directly from GTI's position as a common carrier with its own existing poles in the Bloomington-Normal area, and with contractual relations with Illinois Power Company in regard to other poles in these communities. The matter is one, therefore, which requires our attention even though it affects the awards of franchises by the local communities.

The Commission thus ordered the General System companies to cease and desist from the construction or operation of any CATV channel facilities until a Section 214 certificate is obtained. The Commission stayed this order pending judicial review on September 24, 1969 (J.A. 603-604). CATV service to Bloomington and Normal has commenced, and, as GTEC's brief points out, GTEC will

^{3/} The text of Section 202(a) can be found in the appendix to GTEC's brief and at J.A. 597 .

sell its system to TeleCable if the Commission's decision is affirmed. It should also be noted that on January 28, 1970, the Commission adopted a Final Report and Order in Docket No. 18509 which, among other things, promulgated rules prohibiting a telephone company from furnishing CATV distribution directly or through an affiliated CATV system within the operating territory of the telephone company. Four years will be given to discontinue any such existing service. The Commission also spelled out the basis on which pole line attachment rights must be offered. This ruling is now on appeal to the United States Court of Appeals for the Fifth Circuit, General Telephone Company of the Southwest, et al. v. United States, Case Nos. 29246, et al.

SUMMARY OF ARGUMENT

GTEC's argument that the sole purpose of Section 214 is to prevent wasteful duplication of facilities is in error. That section encompasses all legally relevant factors affecting the public interest. The Communications Act provides a comprehensive regulatory scheme, and since the Commission possesses unquestioned regulatory jurisdiction over CATV and over channel service furnished by carriers, Section 214 is clearly broad enough to deal with the issues relating to a juxtaposition of these two activities.

The Commission correctly held that in order to "maintain the integrity of Section 214" GTEC and GTI have to be "treated as a single operation" with regard to the CATV construction undertaken in Bloomington and Normal. While recognizing that GTEC and GTI are separate corporate entities, the Commission weighed the relationship between the General System companies and their conduct in this case against the purpose and objective of Section 214, and concluded that construction by GTEC without certification would subvert the purpose of Section 214. In addition, the fact that the CATV system is being constructed by a carrier for its own use, as opposed to offering a common carrier service, does not remove the activity from the reach of Section 214. The activity involved is directly related to the purpose of the statute and is therefore subject to regulation. The construction of a CATV system is clearly the kind of "line" construction which is subject to certification.

The evidence of record solidly supports the Commission's conclusions. Thus the Commission found that there was a close working relationship between the various General System companies, including a coordinated CATV policy, and that in Bloomington and Normal GTI was of great aid to GTEC in obtaining the local franchises. The Commission found that this aid was of an anticompetitive nature and that it continued even after the franchises were awarded. This was found to have facilitated GTEC's ability to perform when GTI withdrew its Section 214 application. All of this, when weighed against the purpose of Section 214 and the Commission's current policies, permitted the Commission to conclude that GTEC's CATV construction in Bloomington and Normal was in reality at one with GTI and that Section 214 would be subverted to hold the contrary.

Finally, the ultimate burden of proof in this case rested with the Commission since it had to find that the weight of the evidence supported the conclusions reached. Thus the crux of any question of burden, the risk of non-persuasion, always fell on the Commission. The Commission did ask GTEC to produce certain facts which were peculiarly within GTEC's possession, but this was done under the Commission's general broad investigatory powers and in the end no failure of proof was laid to GTEC so no prejudice resulted.

ARGUMENT

GTEC's principal argument is that the Commission erred in applying the requirements of Section 214 to its plans to construct a CATV system in Bloomington and Normal. This argument is essentially divided into two parts, (1) that the Commission's determination has nothing to do with the "purpose and objective" of Section 214, and (2) that the Commission's decision to treat GTEC and GTI "as a single operation" is wrong factually and legally. We shall show first that the purpose of Section 214 is considerably broader than GTEC would have this Court believe, in fact encompassing all of the usual public interest considerations, and then we will demonstrate that the Commission's decision to treat GTEC and GTI "as a single operation" for purposes of this case rests on a solid foundation. In our final argument we will deal with GTEC's contention that the Commission misallocated the burden of proof.

I. THERE IS AMPLE LEGAL AND FACTUAL SUPPORT FOR THE COMMISSION'S DECISION REQUIRING A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR CONSTRUCTION OF THE FACILITIES USED BY GTEC.

GTEC correctly characterizes the Commission's decision as holding that GTEC and GTI were treated "as a single operation"

engaged in a common carrier activity "in order to preserve the integrity of Section 214 of the Act and to prevent defeat of the purpose and objectives of the statutory provisions." GTEC asserts, however, that the Commission's decision is unrelated to the actual purpose and objective of Section 214(a). GTEC traces Section 214(a) back to Section 1(18) of the Interstate Commerce Act, 49 U.S.C. 1(18), and states that the sole purpose of that section is to prevent wasteful duplication of facilities. And GTEC points out that no such duplication of facilities exists here.

This analysis ascribes a far narrower purpose to Section 214 than can withstand scrutiny; other legally relevant factors affecting the public interest must be taken into consideration as well. In Carter Mountain Transmission Corp. v. F.C.C., 116 U.S. App. D.C. 93, 321 F.2d 359, cert. denied 375 U.S. 951 (1963), this Court affirmed the Commission's denial of a common carrier's application to construct a microwave system to serve a CATV operator. The Commission's denial was grounded on the finding that a grant would have an adverse effect on a local television station and therefore the public interest would not be served. The appellant carrier argued that the Commission had erroneously applied principles of radio broadcast law to a common carrier licensing case and it attempted to analogize the situation to

Interstate Commerce Commission cases. This Court completely rejected that argument, emphasizing the Commission's duty to consider its total regulatory responsibilities when dealing with problems in one particular area of its jurisdiction. In this regard the Court states, 116 U.S. App. D.C. at 96, 321 F.2d at 362:

. . . before awarding the authority the Commission must be convinced that the proposal is "reasonably required in the interest of public convenience and necessity." See 47 U.S.C. §214(a), (c) and (d) (1958). The interest of the listening and viewing public in better and more effective service is paramount.

The Court then discussed the Commission's statutory public interest mandate and concluded, 116 U.S. App. D.C. at 97, 321 F.2d at 363:

It necessarily follows that in determining whether the authorization requested by appellant would be in the public interest the Commission was entitled--if indeed it was not obliged--to consider the use to which the facilities and frequencies requested were to be put, and to weigh that use as against other legally relevant factors, including the effect on existing local stations. 4/

In United States v. Southwestern Cable Co., 392 U.S. 157 (1968), the Supreme Court, in holding that the Communications Act confers regulatory authority over all CATV systems, rejected the

4/ Cf. Federal Power Commission v. Transcontinental Gas Pipe Line Corp., 365 U.S. 1 (1961), where the F.P.C.'s consideration of end result in determining "public convenience and necessity" was upheld by the Supreme Court.

argument that CATV, which is neither wholly common carrier nor broadcaster, thereby falls outside the Act's grasp. The Court reviewed the legislative history of the Communications Act and quoted with approval the language from F.C.C. v. Pottsville Broadcasting Co., 309 U.S. 134, 137 (1940), that Congress "formulated a unified and comprehensive regulatory system for the [broadcasting] industry," and from NBC v. United States, 319 U.S. 190, 219 (1943), that Congress gave the Commission "a comprehensive mandate" with "not niggardly but expansive powers." And, in General Telephone of California v. F.C.C., ___ U.S. App. D.C. ___, 413 F.2d 390 (1969), cert. denied 396 U.S. 888, this Court, in affirming the Commission's holding that CATV channel service furnished by carriers is covered by Section 214, rejected the same argument as GTEC makes here and stated that such carriers could not "have the economic benefits of such carriage as they perform and be free of the necessarily pervasive jurisdiction of the Commission." See also Federal Radio Commission v. Nelson Brothers Co., 289 U.S. 266 (1933); Idaho Microwave, Inc. v. F.C.C., 122 U.S. App. D.C. 253, 352 F.2d 729 (1965); California Interstate Tel. Co. v. F.C.C., 117 U.S. App. D.C. 255, 328 F.2d 556 (1964).

Thus, since the Commission possesses unquestioned regulatory jurisdiction over CATV as well as channel service furnished

by carriers, where the two areas overlap it seems amply clear that all legally relevant factors can be considered. This is not a new position for the Commission. In 1958 the Commission stated, Intermountain Microwave, 24 F.C.C. 54, 57, fn. 2:

Construction, extension, acquisition, etc., of new lines, as distinguished from radio circuits, requires authorization from the Commission under conditions set forth in section 214 (title II) of the Communications Act. Radio authorizations are issued under section 309 (title III) of the act. As applied to common carriers, the standard or test as to whether a grant should be made is substantially identical in terms and effect, i.e., public interest, convenience and necessity. (Section 214 refers only to "public convenience and necessity" omitting reference to "public interest." We have attached no significance to this omission in our administrative implementation of these sections of the act.)

And recently the Commission held that the need for and existence of local CATV franchises are relevant factors in a Section 214 proceeding. New England Telephone and Telegraph Company, 17 F.C.C. 2d 33 (1969).

Furthermore, this litigation may not be a proper vehicle for deciding precisely which factors should bear on a Section 214 decision since the Commission has only decided that a Section 214 certificate must be requested in this case. No decision has been made as to all of the factors which a Section 214 certification

proceeding might include.^{5/} Suffice it to say that GTEC's argument that only wasteful duplication can be considered is clearly wrong since other legally relevant factors can appropriately be considered in determining "the present or future public convenience and necessity."

II. THE COMMISSION'S DECISION TO TREAT GTEC AND GTI AS A SINGLE OPERATION IS LEGALLY AND FACTUALLY CORRECT.

The most critical issue faced by the Commission was whether the conduct of the General System corporations, related as they are, requires the piercing of the corporate veil in order to prevent the purpose and objective of Section 214 from being defeated. The Commission answered this question affirmatively, holding that in order to "maintain the integrity of Section 214" GTEC and GTI have to be "treated as a single operation," and therefore the CATV construction undertaken in Bloomington and Normal is an activity subject to Section 214's certification requirement. GTEC attacks this conclusion on two grounds, that the holding is wrong legally and that the evidence does not substantiate it. GTEC's arguments, however, are fallacious.

^{5/} The Commission did state that the record and findings with respect to the anticompetitive conduct by the General System companies would be taken into consideration in any Section 214 certification proceeding. Assuming Section 214 to be broader than GTEC urges, it seems obvious that anticompetitive conduct is a relevant factor. See Sections 313 and 314 of the Act, 47 U.S.C. 313 and 314; Mansfield Journal Co. v. F.C.C., 86 U.S. App. D.C. 102, 180 F.2d 28 (1950). See also Chronicle Broadcasting Co., 16 F.C.C. 2d 882 (1969); Midwest Radio-Television, Inc., 16 F.C.C. 2d 943 (1969).

A. The Commission Can "Pierce The Corporate Veil"
In Order To Prevent The Purpose Of Section 214
From Being Frustrated; And Section 214 Applies
To Construction Of Communications Lines By A
Carrier For Its Own Use.

GTEC's legal argument is that the Commission cannot pierce the corporate veil in this case in order to attribute common carrier status to GTEC, and that in any event Section 214 does not require certification of lines constructed by a carrier for its private use. We will treat these arguments in that order.

The Commission recognized that GTEC and GTI are separate corporate entities. But in weighing the relationship of the General System companies and their conduct in this case against the purpose and objective of Section 214, the Commission found ample justification for treating GTEC and GTI as a single operation in the Bloomington Normal situation. In General Telephone Co. of California, supra, the Commission stated that "Congress intended by Section 214 to confer upon the Commission broad supervisory control over construction by communications common carriers in order to insure that such construction would not be inconsistent with the public interest . . ." 13 F.C.C. 2d at 458. The Commission went on to say that one factor adverse to a telephone company in such a Section 214 consideration would be an affiliation between the telephone company and the CATV operator, one reason being

that because of its control over the utility poles and its status as an existing common carrier, there is the possibility of anti-competitive conduct by the telephone company. 13 F.C.C. 2d at 462-463 (quoted supra, p.4). The actual existence of anti-competitive conduct in such a situation was found to have occurred in the instant case. As the Commission noted, and as GTEC admits, if GTI had constructed the CATV facilities for GTEC or any other customer, Section 214 certification would definitely be necessary. However, GTEC argues that it is doing the constructing and that it is not a common carrier, and therefore not subject to Section 214. Under the facts as the Commission found them, the Commission was justified in holding that construction by GTEC was a subterfuge to avoid Section 214.

Assuming the facts to be as found (see infra), it seems clear that the Commission was correct in treating GTEC and GTI as a single operation. It is settled law that separate corporate entities may be disregarded " . . . where they are made the implement for avoiding a clear legislative purpose . . ." Schenley Distillers Corp. v. United States, 326 U.S. 432, 437 (1946), or where the statutory scheme would otherwise be frustrated. See Mansfield Journal Co. v. F.C.C., 86 U.S. App. D.C. 102, 180 F.2d 28 (1950); Alabama Power Co. v. McNinch, 68 U.S. App. D.C. 132, 95 F.2d 601 (1937). GTEC dwells on certain classic indicia of

unreal separate entities, such as undercapitalization and intermingling of funds. However, this is not what the Commission based its decision on. Construction of CATV facilities by GTEC would avoid Section 214 certification if GTEC's position was accepted. Considering the relationship between GTEC and GTI, and the facts surrounding the Bloomington-Normal situation, to accept GTEC's position would be to subvert the purpose of Section 214. In Kavanaugh v. Ford Motor Company, 353 F.2d 710 (C.A. 7, 1965), the court disregarded separate corporate entities, not on the basis of the classic factors put forward by GTEC, but because to do otherwise would have subverted the operative statute. Thus, from a legal standpoint, the Commission was entitled to treat GTI and GTEC as a single operation in order to "maintain the integrity" of Section 214. (See infra with regard to the facts warranting this conclusion.)

Apart from the above argument, GTEC asserts that, even if the Commission correctly attributed common carrier status to GTEC, Section 214 does not require certification of lines constructed by a carrier for its own use. In General Telephone Co. of California, supra, the Commission held that Section 214 applies to common carriers offering channel service to CATV operators.

(This would of course cover GTI's original plan to build the facilities and afford channel service to GTEC.) In that case the Commission was only dealing with channel service offerings, clearly a common carrier activity, but Section 214 is not so limited. It provides that "no carrier" can construct "a new line" without certification from the Commission, and "line" is defined as "any channel of communication." Thus Section 214 is not restricted on its face to common carrier offerings, but rather it applies to construction of a "line" by a carrier. It is clear that GTI-GTEC is a common carrier, and that a CATV system is an interstate "channel of communication." See General Telephone Co. of California, supra; also 47 U.S.C. 151 and 153(h). Indeed, in the opinion affirming the above case, General Telephone Co. of California v. F.C.C., supra, this Court held the construction of local CATV channel facilities to be part of an interstate communications service, and therefore subject to Section 214, even though a major portion of the link was not a common carrier service. The issue is therefore not as pat as GTEC would have it. It has long been clear that an activity, not otherwise requiring certification when done by a private entity, can become subject to certification when done by a common carrier. Southern Pacific Terminal Co. v. I.C.C., 219 U.S. 498 (1911); Texas & Pacific Ry. Co. v. Gulf, Colorado &

Santa Fe Ry. Co., 270 U.S. 266 (1926). Cf. United States v. Uncle Sam Oil Co., 234 U.S. 548 (1914); Penn. Ry. Co. v. Pittsburgh, L. & W. Ry. Co., 83 F.2d 861 (C.A. 6, 1936), cert. denied 299 U.S. 572. The real question is therefore whether the activity relates to the purpose of the statute in such a way as to make regulation of the activity permissible in order to promote the statutory scheme. This principle is clearly illustrated by the chief case cited by GTEC to support its argument, New York Central R.R. v. Southern Ry., 226 F. Supp. 463 (N.D. Ill. 1964), affirmed 338 F.2d 667 (C.A. 7), cert. denied 380 U.S. 954 (1965). There the courts held that certification under Section 1(18) of the Interstate Commerce Act, 49 U.S.C. 1(18), was unnecessary under the facts of that case. But in analyzing the legal authority in the rail area, in conjunction with the purpose of the statute, the district court concluded that certification would be necessary if the activity involved common carriage or expenditure of carrier funds.^{6/} The latter factor related to one of the purposes of Section 1(18) of the Interstate Commerce Act, namely, to keep a check on the expenditure of funds by a carrier in similar activities. Neither element was present in that case. But the expenditure of carrier

^{6/} The short per curiam court of appeals opinion leaves the above reasoning intact.

funds to construct the CATV system in Bloomington and Normal is most assuredly a fact in the instant case. Thus, under the test used in New York Central R.R., construction of the CATV system by GTEC-GTI would be subject to certification.^{7/} Therefore, construction of a "line" by a "carrier" would not only be subject to certification where the carrier intended to offer a common carrier service, but also where the carrier intended to operate the system itself. See also Southern Ry. Co. v. North Carolina, 376 U.S. 93 (1964); compare Pennsylvania Electric Co., 84 P.U.R. NS 97 (FPC, 1950); Chalfont Communications v. Tesco Communications, 77 P.U.R. 3d 257 (Cal. P.U.C., 1968).

The policy behind interpreting Section 214 in this manner is eminently reasonable. The Communications Act bestows comprehensive regulatory power on the Commission and in the exercise of that power the Commission is charged with seeing that the public interest is served in the specific subject matter areas within its jurisdiction. See 47 U.S.C. 151. Activities done by communications common carriers comprise one such area. Any specific activity otherwise within the purview of the Commission when done by a communications common carrier would certainly seem to be a subject for regulation.

^{7/} The only other case cited by GTEC was American Tel. & Tel. Co., 2 F.C.C. 308 (1936), in which the Commission required certification for the construction of an experimental coaxial cable.

In the case of Section 214, the Commission scrutinizes all common carriers' proposals to construct lines, i.e., channels of communication, the purpose being, for example, to insure against wasteful duplication or unnecessary construction. To do otherwise would permit a common carrier, which has achieved its status largely at the Commission's sufferance, to use its monopoly position to construct non-carrier communications facilities for its own use without regulatory supervision by the Commission. This is obviously an untenable position. Where the "line" construction activity is one over which the Commission has asserted jurisdiction, such as CATV, the public interest requires regulation for many reasons including the carrier's expenditure of funds, maintenance of competition and control over the dissemination of broadcast signals.

B. The Evidence Of Record Supports The Commission's Conclusions With Regard To GTEC And GTI'S Conduct.

GTEC also attacks the factual base for the Commission's holding that GTEC and GTI must be treated as a single operation for certification purposes. GTEC's argument does not really dispute the facts found by the Commission, but rather it chooses to accent some facts and downplay or ignore others so that different conclusions can be drawn. However, the Commission's conclusions were based on substantial evidence of record and they

reasonably followed from that evidence. Weighing of the evidence is a matter which is committed to the Commission's discretion and we submit that the Commission did not abuse its discretion in this case. See WEBR, Inc. v. F.C.C., __ U.S. App. D.C. __, 420 F.2d 158 (1969); Universal Camera v. NLRB, 340 U.S. 474 (1951). GTEC's ability to draw a different conclusion from the record does not invalidate the Commission's conclusions which were based on substantial record evidence. Consolo v. Federal Maritime Commission, 383 U.S. 607, 620 (1966).

The Commission found evidence of close working relationships between the various General System companies, including a coordinated policy as to CATV, and in the Bloomington-Normal situation the Commission found that GTI was of great aid to GTEC in obtaining the local CATV franchises. The Commission found that this aid was of an anticompetitive nature and that it continued even after the franchises were awarded. This was found to have facilitated GTEC's ability to perform when GTI withdrew its Section 214 application. The underlying facts and the intermediate conclusions drawn from them, when weighed against the purpose of Section 214 and the Commission's current policies in the CATV-common carrier area, led the Commission to conclude that GTEC's CATV construction in Bloomington and Normal was in reality at

one with GTI and that Section 214 would be subverted to hold the contrary.^{8/}

GTEC tries to pinpoint certain conclusions which it feels are in error. However, the record clearly supports the Commission's findings. First, GTEC minimizes the pre-franchise aid given to GTEC by GTI in an attempt to discredit the Commission's finding that "the two companies embarked upon a concerted and coordinated effort to obtain the franchises for GTEC." (J.A. 593.) This is a remarkable argument for GTEC to make considering the contents of the record which is replete with evidence of GTI-GTEC coordinated action. It would not be possible to review all of this evidence here, but see paragraphs 19-23 of the Commission's decision for a capsulization of the relevant evidence (J.A. 584-588), and see, e.g.,

^{8/} The Commission found that GTI's anticompetitive conduct also established a violation of Section 202(a) (J.A. 598). No sanctions were imposed as a result of this finding, although the Commission did state that the record and findings with respect to the anti-competitive conduct would be considered in any Section 214 certification proceeding involving GTI in Bloomington and Normal (J.A. 600). GTEC's brief mentions this finding in a footnote (fn.54). Suffice it to say here that GTI's conduct accrued to the advantage of GTEC and to the disadvantage of the other CATV franchise bidders, and this conduct clearly fits the "undue . . . advantage" proscription of Section 202(a). Further, GTI used its position as a common carrier to influence the outcome of a contest to establish a CATV system which is an interstate "channel of communication." General Telephone Co. of California, supra. Thus Section 202(a) was violated on its face, although no remedy was called for in this proceeding beyond the cease and desist order.

(J. A. 93-95, 119-121, 125-126, 128-131, 145-149, 155, 162-163, 428-435, 463-485, 505-514, 553-560). This is a non-inclusive listing of evidence showing that GTI took positive steps to aid GTEC in obtaining the franchise awards in Bloomington and Normal even after the other bids had been submitted. These steps were not just limited to aid in formulating construction plans as GTEC states in its brief. And of course the above discussion does not begin to cover the evidence showing the effect that GTI's policies had on the other franchise bidders' chances or the post-franchise coordination between GTI and GTEC. See paragraphs 9, 10, 12, 13, 18 and 26-29 of the Commission's decision (J.A. 577-581, 583-584, 589-590).

Next, GTEC asserts that the Commission's holding that GTI never exercised its "veto" power over GTEC's proposed use of Illinois Power's poles is erroneous since no such power existed.^{9/}

^{9/} The utility poles in Bloomington and Normal are individually owned by either GTI or Illinois Power, but they are jointly used. GTEC's pole line attachment agreement is with Illinois Power. GTI decided not to be the one to grant such an agreement, but only after it determined that GTEC could construct the system without a pole line agreement from GTI. (J.A. 450-452, 486-487.) Interestingly enough, this concern on GTI's part about GTEC's ability to construct is dated right after the objections to GTI's 214 application were filed, but prior to the time when GTEC announced that it was going to build its own system.

The pole situation in Bloomington and Normal is somewhat complex but what is clear is that Article 21, paragraph (h) of the General Joint Use Pole Agreement between GTI and Illinois Power provides that pole space to be occupied by a third party shall be assigned by the owner of the pole with the concurrence of the other primary user. The assignment of such space and usage by a third party is subordinate to the rights and present and future requirements for the space by the other primary user. (J.A. 365-398.) In April of 1968, prior to the events in question, Illinois Power had told GTI that this article could be read to mean that GTI had priority rights on Illinois Power poles before any third party CATV occupancy (J.A. 436-440, 522). This is what the Commission meant by "veto" power, a term used in a concluding paragraph of the opinion, although the facts as set out above were found in earlier portions of the decision. Paragraphs 11 and 28 (J.A. 579, 590.) Furthermore, at no time did GTI ever interpose any objections to GTEC's use of space on the Illinois Power poles. Even more interesting, after GTEC obtained the franchises, GTI permitted temporary violations of its pole space by GTEC so that GTEC could meet its construction schedule. (J.A. 117, 218-219, 491-493.) Thus the Commission was clearly warranted in

drawing the inference that GTI stood ready to do more for GTEC in the matter of pole space than it would for the other franchise hopefuls.

GTEC then takes umbrage at the Commission's characterization of GTEC's plan to construct its "own" CATV system rather than taking channel service from GTI as an "escape." GTEC states that this plan was necessary in order for it to meet the local construction requirements and that this had nothing to do with corporate affiliations. The former is undoubtedly true; however, as to the latter, the web of evidence shows the contrary. GTEC, in its original franchise bid, proposed to take channel service from GTI (J.A. 238). The franchise application set forth a complete construction schedule which had been worked out with GTI (J.A. 145-147, 469, 471-473). This was prior to the Commission's 214 decision, General Telephone Co. of California, supra. After this decision GTEC twice told the cities that its ability to perform would not be affected by any delay in GTI's 214 application, because if delay occurred GTEC would build its "own" system. (J.A. 128-129, 201, 202, 482-485.) After the franchises

had been granted to GTEC,^{10/} GTI and GTEC met with the Jerrold Electronics Corporation to discuss construction plans. GTI felt that it would be best to have Jerrold construct the CATV system since if there was trouble with GTI's 214 application it would be easier to turn the project over to GTEC. (J.A. 121-123, 528-534.) GTI and Jerrold did not then sign a contract. As GTI and GTEC had feared, GTI's 214 application was opposed and therefore some delay was inevitable. (J.A. 274-332.) Early in 1969 GTEC informed the cities that due to the delay on GTI's 214 application it was going to construct the system without GTI. (J.A. 487-489.) GTEC thereupon signed a construction contract with Jerrold. (J.A. 335-358.) Shortly thereafter GTI notified the Commission that it was withdrawing its 214 application. (J.A. 543) Construction then proceeded. The Commission, in its decision, took these facts into consideration, plus the evidence

^{10/} As demonstrated, supra, GTI rendered substantial aid to GTEC's franchise quest. From this and other evidence the Commission was able to infer that the affiliation between GTI and GTEC was of considerable help to GTEC's bid since it was the only bidder which could assure timely inception of service under the franchise. See paragraph 37 of the Commission's decision (J.A. 595-596); see also (J.A. 193-194, 203-204, 207-208, 220-226, 399-401, 534-537, 569-570.)

of GTI's pre-franchise aid to GTEC, supra, the general relationship of the two entities, and the implementation of General System CATV policies, and reasonably concluded that there was an overall pattern to these activities, namely that the General System companies wanted control and ownership of the CATV facilities in Bloomington and Normal. Nothing was wrong with that goal per se, but in the pursuit of that goal GTEC and GTI's tactics included a shift from construction by GTI (needing 214 certification) to construction by GTEC (hopefully not needing 214 certification). This shift was accomplished when the prospect of delay raised GTI's and GTEC's apprehensions that the franchises might be lost if the time schedules were not adhered to, but it was found to be no more than a nominal shift under the circumstances of this case. (J.A. 593-594.) The construction activity would be subject to Section 214 if GTI were doing it for GTEC, as GTEC admits, and the in-name-only shift to construction-by-GTEC does not alter the basic situation as found by the Commission based on the evidence of record.

GTEC stresses that it bid for the franchises "on the same footing" as the other applicants. However, the evidence supports the Commission's opposite conclusion. As set out, supra, GTEC received substantial aid from GTI in preparing its franchise bid and in paving the way toward a victory in the franchise

contest. Furthermore, the record shows that GTEC's affiliation with GTI was of actual benefit to GTEC in the cities' deliberations. See footnote 10, supra. In addition, GTI's policies and actions served as detriments to the other two bidders. This hardly reflects an equal franchise contest.

The remainder of GTEC's argument on this point is given over to asserting that the facts do not justify treating GTEC and GTI as one operation under normal legal theory and therefore it must be the fact of affiliation alone which decided the case. This argument misconceives the entire thrust of the Commission's decision. In its 1968 Section 214 decision, General Telephone Co. of California, supra, the Commission listed as a factor militating against a telephone company 214 application the existence of an affiliation between the CATV operator and the telephone company. The stated reasons for this policy were that a telephone company, "by reason of its control over utility poles, or other local advantages resulting from its status as an existing common carrier in the community, . . . is in a position to preclude or to substantially delay an unaffiliated CATV system from commencing service and thereby eliminate competition." 13 F.C.C. 2d at 463. In addition, the Commission felt that construction for an affiliate

needs to be carefully scrutinized "to insure against wasteful duplication or unnecessary construction." Ibid. In other words, long before this case arose, the Commission saw that the telephone company-CATV affiliate situation carried within it a clear potential for conduct contrary to the public interest. And the instant case simply confirmed the Commission's suspicions by uncovering not a potential problem but a fully realized situation along the lines feared in that earlier decision. Thus GTEC is correct in saying that the fact of affiliation played a large part in the Commission's decision in this case, but it was the conduct which flowed from that affiliation which led the Commission to hold as it did.

The Commission specifically disclaimed any general anti-affiliation holding, stating that "while this case is obviously pertinent to the issue, we do not now definitively make any general policy determination concerning the action to be taken where an affiliation exists between the telephone company and the CATV operator in a particular community since that matter is also under consideration in a separate proceeding." (J.A. 597.) The proceeding referred to was the Notice of Inquiry and Notice of Proposed Rule Making in Docket No. 18509, released April 4, 1969, 34 F.R. 6290. As noted in the Counterstatement, supra, the Commission released a Final Report and Order in that proceeding on February 4, 1970, in

which rules were promulgated generally prohibiting telephone companies from providing CATV distribution facilities directly or through affiliates in their service areas.^{11/} Telephone companies now providing such service have been given four years to discontinue. This would of course affect GTI-GTEC in any event. However, the entire picture of Section 214 regulation as it relates to telephone companies and their affiliates serves to place this case in context, and it shows that the GTI-GTEC activity is clearly a situation which comes under Section 214 because the nature of that activity when viewed against the purpose of Section 214, the Communications Act, and the Commission's policies, is clearly within the purview of the certification requirements.

^{11/} The heart of the Commission's reasoning, which follows from the original Section 214 decision in 1968 and such cases as this one, is that the telephone company's monopoly position in a community can have undesirable consequences for CATV franchise competition, that this monopoly would be extended into further broadband cable facilities if telephone companies were permitted to use CATV as a toehold, and that a competitive environment should be maintained in order to prevent unnecessary concentration of control over communications media. See paragraphs 46-48 of the Final Report and Order, 21 F.C.C. 2d 307, 324-325.

III. THE BURDEN OF PROOF WAS NOT MISALLOCATED;
THE COMMISSION CARRIED THE ULTIMATE RISK
OF NON-PERSUASION.

GTEC's final argument relates to the procedures followed by the Commission. The proceeding was initiated by an order to show cause to determine whether a cease and desist order should issue. Section 312(d) provides that in such a proceeding the burdens of proof and proceeding with the evidence should be on the Commission. GTEC asserts that the Commission misallocated the burden of proof in the order to show cause when it placed that burden on GTEC for some issues and on TeleCable for others (J.A.70). Such a simplified recitation ignores the realities of what transpired in this proceeding. The burden of proof was in fact borne by the Commission.

In the order to show cause the Commission relied on more than just Section 312, in fact also citing Sections 4(i), 4(j), 208, 214, 218, and 403 (J.A. 68). Section 208 provides that in the event of a complaint against a carrier the carrier must satisfy the complaint or else the Commission will investigate "in such a manner and by such means as it shall deem proper."^{12/} Section 218 gives the Commission full powers of inquiry into the

^{12/} It will be recalled that this proceeding was initiated by a complaint filed by TeleCable.

business of subject carriers. And Section 403 gives the Commission the power to institute inquiries relating to enforcement of the Act on its own motion. Thus it can be seen that this proceeding was more than a simple order to show cause; it was also an inquiry into the practices of a carrier otherwise subject to the Commission's jurisdiction.

The issues in this case, which are fully set out in the order to show cause and in the Commission's decision (J.A. 69-70), are divided into two categories, factual and determinative. The factual issues were designed to elicit the facts surrounding the negotiations for pole line attachment agreements between Perfect Picture and/or TeleCable and GTI, the relationships between the General System companies, GTI's withdrawal of its Section 214 application, and GTEC's plans and/or actions regarding CATV in Bloomington and Normal. The latter three factual issues are the only ones which GTEC had the burden of "proving." These issues are totally factual; they are merely preludes to the real questions in the case. It is true that the Commission could have adduced the evidence in these issues using its investigatory powers, but then a more drawn out elicitation of the facts at the hearing would have occurred. After all, these facts were all peculiarly

within GTEC's possession. See paragraph 39 of the Commission's opinion (J.A. 598). The Commission merely asked GTEC and GTI to recite facts which the Commission could have introduced. But the burden of proving the crucial issues, namely whether GTEC and GTI's activity was subject to Section 214, whether their actions were anticompetitive and monopolistic, and whether a cease and desist order should issue, did not fall on GTEC.^{13/} The heart of the matter in any burden of proof question is where the risk of non-persuasion lies. That is the crux of Section 312(d). In the end, the Commission must find by the weight of the evidence that in fact there has been a violation of the Communications Act (or a regulation) before a cease and desist order can issue. See Midwest Television, Inc. v. F.C.C., C.A.D.C., Case Nos. 22077, et al., February 4, 1970, slip opinion, pp. 17-18. This is exactly what happened in the instant case. Furthermore, the record reflects

^{13/} It is true that TeleCable, not the Commission, was given the task of making the case on these issues. This was done because TeleCable was the party who initiated this proceeding and it was in a far better position to know what had transpired. However, this fact in no way prejudices GTEC since in any event TeleCable and the Commission's Common Carrier Bureau were arrayed against it and GTEC needed to rebut the evidence no matter who introduced it. And, as set out above, it was the Commission which ultimately bore the real burden of proof. See 5 U.S.C. 556(d).

that the key evidence was introduced by either TeleCable or the Commission's Common Carrier Bureau. No failure of proof was laid to GTEC on any issue, and no evidence was excluded by reason of burden allocation. In the end the weight of the evidence supported the Commission's conclusions. Therefore, there was no prejudice to GTEC. Cf. American Trucking Associations, Inc. v. F.C.C., 126 U.S. App. D.C. 236, 377 F.2d 121 (1966), cert. denied 386 U.S. 943 (1967); Specht v. C.A.B., 254 F.2d 905 (C.A. 8, 1958).

CONCLUSION

For the reasons set out above, the Commission's order to GT&E, GTI, and GTEC to cease and desist from the construction or operation of CATV distribution facilities in Bloomington and Normal until a Section 214 certificate has been obtained should be affirmed.

Respectfully submitted,

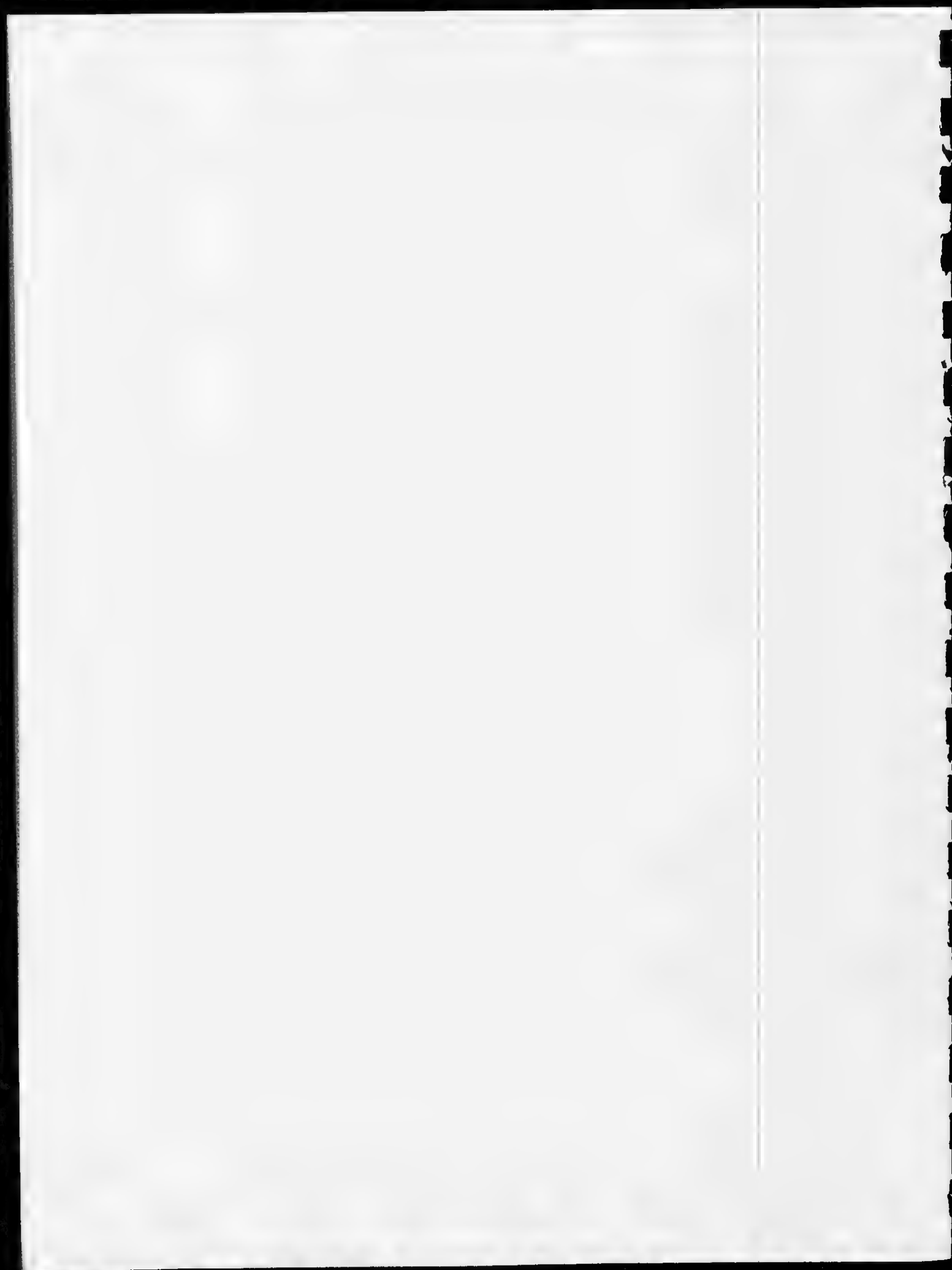
HENRY GELLER,
General Counsel,

JOHN H. CONLIN,
Associate General Counsel,

STUART F. FELDSTEIN,
Counsel.

Federal Communications Commission
Washington, D. C. 20554

April 6, 1970.



BRIEF FOR INTERVENOR

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23,455

GT&E COMMUNICATIONS, INC.,

Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,

Appellee,

TELECABLE CORPORATION,

Intervenor.

ON APPEAL FROM DECISION OF
THE FEDERAL COMMUNICATIONS COMMISSION

JAY E. RICKS

MARVIN J. DIAMOND

815 Connecticut Ave., N.W.
Washington, D. C. 20006

Attorneys for Intervenor

Of Counsel:

HOGAN & HARTSON
815 Connecticut Ave., N.W.
Washington, D.C. 20006

United States Court of Appeals
for the District of Columbia Circuit

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Nathan J. Paulson
CLERK

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PRELIMINARY STATEMENT

Appellant has attempted to characterize the proceeding before the Commission as an unwarranted attempt by a federal regulatory agency to interfere with the decisions of local governing bodies regarding the award of CATV franchises. Appellant is wrong. This case concerns the attempt by General Telephone & Electronics Corporation to extend the telephone monopoly of its operating subsidiary in Bloomington and Normal, Illinois to the ownership and control of CATV distribution facilities.¹ Because Appellant's brief attacks the substantiality of the evidence on which the Commission relied in its decision herein, we have determined to set forth a somewhat detailed counter-statement of the case.

COUNTER-STATEMENT OF CASE

The following parties participated in the proceeding before the Federal Communications Commission (Commission) that led to the decision here under appeal: The Commission's Common Carrier Bureau, the Commission's CATV Task Force, General Telephone & Electronics Corporation (GT&E), General Telephone Company of Illinois (GTI), GT&E Communications, Inc. (GTEC), TeleCable Corporation (TeleCable) and Bloomington-Normal Perfect Picture Corp. (Perfect Picture). Intervenor TeleCable and Perfect Picture were applicants for a cable television (CATV) franchise in Bloomington-Normal, Illinois. The identity of the General System parties and their relationship to each other is explained in detail below.

On the basis of pleadings filed by TeleCable, the Commission on May 5, 1969, Pursuant to Sections 4(i), 4(j), 208, 214, 218, 312(b) and (c) and 403 of the Communications Act of 1934, as amended, directed GTI and GTEC² to show cause why they should not be ordered to cease and desist from construction, operation and offering

¹ The physical properties of CATV, its traditional purpose as a device to improve the reception of television signals, and its potential for broadband communications services are now well known to this Court. *General Tel. Co. of Cal. v. FCC*, 413 F. 2d 390 (D.C. Cir.), *cert. denied*, 396 U.S. 888 (1969); *Buckeye Cablevision, Inc. v. FCC*, 128 U.S. App. D.C. 262, 387 F. 2d 220 (1967); *Philadelphia Television Broadcasting Co. v. FCC*, 123 U.S. App. D.C. 298, 359 F. 2d 282 (1966).

² GT&E was added as a party by the Commission's Review Board on June 17, 1969 (18 FCC 2d 348, JA 74-81).

of CATV facilities in Bloomington and Normal, Illinois in violation of the Communications Act (JA 65-71). Preliminary to the hearing, TeleCable and the Commission sought the production of documents from the General System respondents and took extensive depositions of their officers and employees. Primarily as a result of this discovery, TeleCable alone introduced into evidence at the hearing 140 exhibits involving hundreds of pages of documents and transcripts of depositions. The Commission's decision herein is supported almost in its entirety on the basis of these writings and statements which were obtained through discovery from the General System. Thus, in arguing that the Commission's decision is not supported by substantial evidence, appellant untenably must refute the plain meaning of documents written by officials of the General System.

I. GENERAL SYSTEM POLICY REGARDING CATV

General Telephone & Electronics Corporation (GT&E) is a holding company which owns a controlling interest in over 115 operating subsidiaries (referred to collectively as the "General System"). GT&E exercises control over its operating subsidiaries through GT&E Service Corporation (GTES), a wholly-owned subsidiary whose only function is to formulate policy and to coordinate activities for the General System (JA 86-91, 93, 95-96, 101-02, 409-14, 416-18, 422-23, 552). All of the officers of GT&E have corresponding positions with GTES and eight of the nine-man Board of Directors of GTES are either officers or directors, or both, of GT&E (JA 82-86). GTES produces no income; its expenses are shared by the General System operating companies (JA 424-25). For income tax purposes the earnings of the parent and its subsidiaries are considered together in a consolidated tax return (C.C.B. Ex. 1, p. 60). As the Commission found

[T]he Service Corporation with interlocking directors and officers functions as the coordinating arm of the parent corporation, tying together the far-flung activities and policies of operating subsidiaries through the close identity of the respective officers and directors (JA 575).

General Telephone Company of Illinois (GTI) is one of more than 30 domestic and international telephone subsidiaries of the General System (Gen. Ex. 54 (Annual Report, p. 10)). GTI's officers and directors are not common with those of GT&E or GTES, but

GT&E holds over 90 percent of the voting stock of GTI (JA 82). Although the General System respondents argued before the Commission that the operating subsidiaries enjoyed some autonomy in their day-to-day operations, it is clear that GTES "recommendations" could be ignored only for sound reasons (JA 93-94), and that GT&E, through GTES, could curtail any such autonomy by exercising its voting rights (JA 414-16). Moreover, James J. Clerkin, Jr., the corporate executive of GT&E and GTES who typically signed the recommendations to GTI and other operating telephone subsidiaries of the General System (JA 427-28, 436-37, 440-41, 495), also had the responsibility for appointing presidents and other major officers to head those operating subsidiaries (JA 93, 106-07, 109, 422-24).

Prior to February 1965, General System policy regarding CATV was somewhat vague, with the result that most companies, including GTI, confined their activities in this field to leasing space on telephone poles for the attachment of CATV cables which were owned by CATV operators (JA 455). Several general telephone companies had filed tariffs with State Public Utility Commissions which contemplated the ownership of the CATV plant by the telephone company with the lease of channels to the CATV operator³ (JA 440-41), but such efforts prior to 1965 were not part of a coordinated policy of the General System and the costs of providing the service were prohibitive (JA 411-12, 440, 455, 497-99). GTI's attempts to negotiate agreements covering the provision of a channel service to CATV operators were unsuccessful because its pricing similarly was not competitive (JA 445).

However, during the summer of 1965, the General System policy regarding CATV was reassessed by GTES (JA 411-12). GTES determined that CATV was part of the General System's "charter communications" service and that CATV distribution facilities, therefore, should be owned by the General telephone companies and offered to CATV

³ As this Court is aware, there are two basic methods of providing CATV distribution facilities: (1) the CATV operator may construct its own cables over existing poles of utility systems by private contract with that utility or the CATV operator "may contract with a telephone system to provide the entire channel service distribution which carries the signal from the headend to the subscriber's home." *General Tel. Co. of Cal. v. FCC*, *supra*, 413 F.2d at 393.

operators on a tariff basis (JA 411-12).⁴ GTES viewed the leasing of pole space to CATV operators as inconsistent with its belief that CATV was a communications facility to be offered by telephone companies (JA 111-12, 114-15, 411-13); see also (JA 103-04, 116-17).

The policy formulated by GTES regarding CATV resulted in two related actions: the creation of a General Company, GT&E Communications, Inc. (GTEC), the appellant herein, to operate CATV systems and a coordinated effort by General Telephone companies to market channel service offerings (JA 440-41, 455-57, 495, 496, 497-502). Before creating GTEC, GTES considered having General Telephone companies engage in CATV activities directly or through wholly-owned subsidiaries in their respective jurisdictions (JA 412-13). However, because the "regulatory climate was so confused and so unstable," GTES chose to use GTEC as the General System CATV company "until some clarification appeared on the horizon which would make a more finite decision as to whether this should be another service offering of the telephone company" (JA 412-13).

GTEC, a wholly-owned subsidiary of GT&E, therefore was created to engage in the furnishing of CATV service directly to the subscriber. Of GTEC's 7 officers, 5 are officers of GT&E and GTES. Of GTEC's 5 directors, 2 are officers and directors of GT&E and GTES, and the others are either officers of both or directors of both (JA 82-86). For example, Mr. James J. Clerkin, Jr., the Executive Vice President, Telephone Operations, of both GT&E and GTES, is President of GTEC (JA 83-85).

An announcement concerning the formation of GTEC was sent by GTES to all General System companies on May 10, 1965. Approximately one week later, GTES advised the presidents of all of the General System telephone companies that GTES was in the process of preparing a guide to assist them in the marketing of CATV distribution facilities⁵

⁴Mr. Leslie H. Warner, the President of GT&E, succinctly stated his company's objectives with respect to CATV: "We feel that whatever type of services will some day be provided by coaxial cable networks ought to be provided by us" (JA 103-04, 405-09).

⁵In June 1965, GTES issued its CATV Marketing Guide. The Guide covered the following subjects: (1) Filing of CATV Distributions Facilities Tariffs; (2) Determination of Potential CATV Locations for Active Marketing Effort; (3) Determination of Background and Marketing Information for Each Potential CATV Location; (4) Notification to GT&E Service Corporation of Most Attractive Potential Locations; (5) Provision of the Required Distribution Facilities; (6) Designing of Telephone Company Portions of Most Attractive Potential Locations (JA 500-01).

(JA 496-97). GTES further requested that each operating telephone company

"provide Mr. W. F. Stewart, General Manager of GT&EC, Inc. [GTEC], 730 Third Avenue, New York, N.Y. available details of any CATV inquiries which have come to your company. All possible information concerning a CATV inquiry should be provided to Mr. Stewart *before your company conducts any discussions or negotiations of CATV service.*" (Emphasis added) (JA 496)

At the time the above-quoted instructions were given by GTES to the General System operating telephone companies and thereafter, Mr. W. F. Stewart held *no* position with GT&E or GTES. In fact, it was acknowledged by the GTES officer who signed the directive concerning CATV inquiries, that the purpose of sending such information to Mr. Stewart was to obtain information on potential CATV markets for GTEC (JA 87-88, 99). The natural consequence of this policy was that when an applicant for a CATV franchise contacted a General Telephone Company concerning the availability of CATV service, a common carrier offering, GTEC was automatically "tipped off."

The record before the Commission clearly established that GTES's purpose in alerting GTEC to potential CATV markets within the operating areas of General telephone companies was to assure that the General System would own and control the broadband distribution facilities utilized by CATV in such areas (JA 543-48).

Notwithstanding the efforts of the General telephone companies to market CATV distribution facilities to independent CATV companies, experience proved that if given an option most, if not all of them, preferred to construct their own cables under pole attachment agreements with local utility companies (TeleCable Ex. 23).

In order to reverse this trend, GTI, for a period of time prior to October, 1966, refused to grant pole attachment rights to CATV operators, but instead, offered them only the option of leasing CATV distribution facilities from GTI. On October 3, 1966, GTI advised its division managers of a change in its pole attachment policy as follows:

As you know, our Company recently revised our CATV Tariff which we feel to be competitive to pole lease agreements. Therefore, our policy of not entering into additional agreements for the furnishing of pole contact rentals is now changed to afford a CATV operator the option of leasing our Company facilities or entering into a pole lease agreement.

Attached is one copy of a revised CATV Pole Lease Agreement. The revision has changed the pole contact rate to \$4.50 per contact. Existing agreements are of course continuing to charge the former rate of \$3.00 per contact, until they have expired. * * *

We firmly believe that our present tariff for leasing CATV facilities, in most instances, will result in an operator realizing more benefits, including profit, than can be realized from a pole lease agreement. For this reason, new pole lease agreements should not be entered into until after all possibilities for a lease system have been explored with General Marketing (JA 446-47).

Also in 1966, GTES had recommended to all General Telephone companies that every effort be made to market CATV distribution facilities rather than pole attachment rights. Among the market considerations listed by GTES were:

1. A demonstrated current market exists for CATV *distribution networks*. General System operating companies should provide this capability.
2. Coaxial cable distribution networks have the capability of carrying numerous types of communications services of the future—beyond just CATV.
3. To preserve integrity of serving territories and plan for future business, telephone companies should own all communications capabilities in their operating areas—particularly distribution plants (JA 436-40).

When it became apparent to GTI that independent CATV operators believed a privately owned system utilizing pole attachments was economically more advantageous than the telephone company's revised tariff for the lease of CATV facilities, GTI, in February, 1968, issued the following memorandum to all Division Managers:

Effective immediately our Company will not sign any new pole lease agreements with CATV companies proposing to furnish CATV service in any communities served by our Company. Also before renewing expired pole lease agreements, with CATV companies, a careful review should be made and every effort extended to purchase the CATV facilities involved prior to committing ourselves to a renewal of the pole lease agreement.

This approach to CATV facilities and pole lease agreements should be discussed with municipal governments for their consideration when dealing with matters pertaining to CATV facilities.

Naturally, this policy should be tempered with judgment. Should a severe adverse reaction develop, you are to immediately notify this Office for further review and counseling (JA 449).

GTI's policy of not granting pole attachment agreements was based on its belief that affording CATV operators the option of a pole attachment agreement was inconsistent with the marketing of channel services (JA 111-12, 117-19), and because GTI considered a distribution facility owned by a CATV system to be a competitor of the telephone company (JA 113-15). GTI was advised by an officer of GTES in early 1969 "that it is System policy that we no longer grant CATV pole attachment contracts except that we will probably continue to permit renewal of pole attachment agreements where they are already in force" (JA 453). The reason for the change in General System policy regarding the lease of poles to CATV systems was the same as that which prompted the change in GTI policy. GTES was interested in leasing channel services "for not only the CATV service, but additional services as they may come along" and it believed that the lease of pole space to CATV systems was inconsistent with this primary interest (JA 101-03, 411-13).

However, even with its policy of not permitting pole attachment agreements, GTES was concerned that CATV operators still could find a way to construct their own distribution facilities in areas served by General telephone companies. This eventuality could occur in several ways. The CATV operator might be able to construct its facilities underground rather than on utility poles or on utility poles owned by an electric power company (TeleCable Ex. 65.18-21). Or, as recognized by GTES, external pressures could be brought to bear on the telephone company which would oblige it to grant, however reluctantly, pole attachments to a CATV operator (JA 418-19).

GTES, therefore, approved a plan which would remove all doubt from the matter. The plan was called the "Major Market Program for CATV" and it provided in summary that General telephone companies would assist GTEC in acquiring CATV franchises within their major operating areas, and GTEC, in return, would lease CATV distribution

facilities from the appropriate General Telephone company (JA 91-93, 96-98, 137-39, 421-22, 505-14). Thus, the successful implementation of the Major Market Program for CATV would absolutely assure General System ownership and control of CATV distribution facilities within each of the designated markets. Bloomington and Normal, Illinois (Bloomington-Normal) were designated as the major CATV market for GTI (JA 545-46).

II. THE BLOOMINGTON-NORMAL FRANCHISE

GTI became aware of Perfect Picture's⁶ interest in CATV in Bloomington-Normal sometime in 1964. In order to demonstrate the economic advantages of a privately owned system using pole attachments over GTI's CATV channel service offering, Perfect Picture supplied the financial projections of its consultants to GTI (JA 159-60). At the time these materials were supplied, GTI assured Perfect Picture that the General System would not be an applicant for the Bloomington-Normal CATV franchise (JA 166-67, 430-33). GTI, however, informed GTES and GTEC of the "negotiations or conversations . . . with Perfect Picture" (JA 552-53) and continued to do so after it learned that GTEC would, in fact, be an applicant for the Bloomington-Normal CATV franchises (JA 430-33).⁷

Subsequently, the president of GTI informed Perfect Picture that he would be obliged to call in GTEC as an applicant for the CATV franchise unless Perfect Picture would agree to lease CATV distribution facilities from GTI (Supp. App. 1; JA 119, 433-35, 551-52). Perfect Pictures would not agree and requested instead the option of a pole attachment agreement from GTI. While never flatly stating that a pole attachment would be refused if Perfect Picture were the winning applicant for the CATV franchise, GTI nevertheless made it quite clear that such an agreement would not be offered voluntarily (JA 117-19,

⁶The company was then named "Bloomington-Normal Full Vision," and it was composed primarily of the persons who subsequently formed Perfect Picture (JA 548-49, Tr. 388-89).

⁷As early as May, 1965, GTES had requested GTI to prepare an economic feasibility study for CATV in Bloomington-Normal (JA 454-55), and apparently such a study was accomplished in June, 1965 (TeleCable Ex. 35.2). GTEC had access to the marketing service of GTES (JA 86-88) and either through GTES or through direct communications with GTI, GTEC was informed of the economic feasibility and opportunity for CATV in Bloomington-Normal (JA 430-33, 454-61, 506-09, 511-12).

123-25, 168-69). Perfect Picture also inquired of GTI whether GTEC might wish to join in Perfect Picture's CATV application (JA 162-63, 430-33). GTI was advised by the New York office of GTEC that "GTEC would not in any way be interested in joining partnership with the local forces, but *requested this fact be kept confidential in our discussion with local people.*" (Emphasis added) (JA 433) Thus, there was no reciprocity of information. Both GTEC and Perfect Picture informed GTI of their plans. GTI divulged Perfect Picture's plans to GTEC, but GTI maintained the confidence of its affiliate's plans from everyone outside the General family. (See, e.g., Tr. 380-81).

As the date approached in early 1968 for the filing of applications for CATV franchises with the local governing bodies of Bloomington and Normal, GTEC sent a letter to GTI which stated in part:

We request the opportunity to present our Major Market Program to the President and staff of the General Telephone Company of Illinois. This is a presentation covering the benefits to the General System through GTEC and the Telephone Companies actively pursuing and securing CATV franchises in certain of the larger metropolitan areas served by General Telephone. Bloomington, Illinois is such an area (JA 557).

The "Major Market Presentation," which was submitted to the President of GTI and his staff on April 24, 1968, explained why it was important to GTI and the General System for GTEC to obtain the Bloomington-Normal CATV franchises. It pointed out that there are several methods of constructing CATV facilities and that GTI would realize little or no revenues if the cable operator constructed its own system, but that a system built by GTI would produce annual revenues of over \$150,000 (JA 509-11). More importantly, GTI would own and control the broadband distribution facilities utilized by CATV. As the Major Market Presentation stated:

Again, it must be emphasized — any direction is possible — General Telephone of Illinois has no assurances of obtaining the distribution system from Cable TV operators. The revenue potentials are questionable. The market is competitive.

On the other hand, if GTEC is awarded the franchise for Bloomington/Normal, Illinois, General Telephone Company of Illinois will provide the distribution facilities for the system, and will realize in excess of \$158,000 in annual revenues in the fifth year. In looking at all of the General Tele-

phone major market target cities, GT&E telephone operations could realize \$2.5 million in revenues annually from distribution systems created by GTEC's activity (JA 509-10).

Thus, GTI was assured of ownership of the CATV distribution facilities if GTEC secured the Bloomington-Normal franchises; an assurance which was not possible with a non-affiliated operator. It is significant to note, however, that GTEC did not give such assurances because of any indicated economic advantages to it from the lease of telephone constructed facilities as distinguished from a wholly-owned system. In fact, GTEC never performed an economic or technical comparison of the two methods of CATV operation with respect to Bloomington-Normal (JA 100, 149-50). Rather, it appears that the sole determining consideration was to obtain "the benefits to the General System" by utilizing GTEC as the means of acquiring the CATV distribution for GTI (JA 99-100).⁸

GTI was advised that the Major Market Program "has been reviewed and approved by GT&E Service Corporation [GTES] management and by Mr. Clerkin."⁹ (JA 513). The Major Market Presentation recommended three steps on the part of GTI in securing the Bloomington-Normal CATV franchises for GTEC:

1. A total commitment must be made to an intensive program aimed at assisting GTEC to obtain the Bloomington/Normal Cable TV franchise.

* * * * *

2. A comprehensive program should be developed to obtain intelligence as to the Cable TV situation in Bloomington/Normal. Current information

⁸GTEC attempted at the hearing to explain away the plain language of the "Major Market Presentation" as an attempt to neutralize the expected opposition of General Telephone Companies to the entry of GTEC in their markets. Cross-examination of GTEC's witness established, however, that of 58 applications that GTEC had filed in communities where General Telephone Companies operate, GTEC had been awarded 18 franchises, but that of 24 applications filed in non-General communities GTEC had been awarded no franchises (JA 138-43) — although GTEC apparently was awarded franchises in two or three communities located in close proximity to other communities that are served by General and that also awarded GTEC franchises (JA 143-45).

⁹The Mr. Clerkin referred to in the "Major Market Presentation" was, at that time, President of GTEC and Executive Vice President, Telephone Operations, of GTES and GT&E. Since Mr. Clerkin's duties included the appointment of top executives to the operating telephone companies — including the President of GTI — his *imprimatur* obviously amounted to the force of law with the operating subsidiaries (JA 105-11, 422-24).

must be available if the necessary coordination steps are to be taken.

Information must be provided to GTEC on a continuing basis. Included here would be appropriate information on scheduling, facilities, other applicants, city government activity, etc.

3. An Employee education program should be initiated in Bloomington/Normal to inform the General Telephone Company of Illinois employees as to cable TV and GTEC's role in providing this service (JA 514).

Notwithstanding the fact that GTI had accepted confidential financial material from Perfect Picture in connection with its CATV public tariff, GTI undertook to give GTEC active assistance in securing the Bloomington-Normal franchise.¹⁰ Much of this assistance took the form of providing GTEC with a competitive advantage over any other applicant for the Bloomington-Normal franchises and of burdening the non-affiliated applicants with a competitive disadvantage.

GTI turned over to GTEC the telephone company's correspondence file with Perfect Picture.¹¹

At the suggestion of GTEC, GTI invited Bloomington and Normal city officials to fly in a chartered plane to view the GTEC CATV operation in Adrian, Michigan (JA 465-68).

On May 3, 1968, the President of GTI wrote a letter to the General Manager of GTEC and said that "we will do what we can to influence Bloomington and Normal councils in awarding the CATV franchises to your Company. We recognize the benefits to all of us in this business." (JA 464).

¹⁰ At the time of preparing the Major Market Presentation, GTEC had no knowledge of what other applicants would be filing in the General System Major Markets (JA 137-39). Similarly, when it promised to assist GTEC, GTI had no knowledge of how many other applicants would be seeking the Bloomington-Normal franchises, but GTI was aware that several companies had expressed an interest in the operation of CATV in Bloomington-Normal (JA 210-11, 549-50).

¹¹ While admitting receipt from GTI of Perfect Picture's correspondence files, GTEC witnesses denied receiving Perfect Picture's financial projections from GTI. However, it was established that the Perfect Picture financial material was submitted to GTEC by GTI and that most GTEC officers also held positions with GTEC. Moreover, no explanation or justification was given by any witness of the General System as to why GTI turned over to GTEC the Perfect Picture correspondence files. (Supp. App. 1: JA 127, 151-52, 159-62, 442-45, 482).

A most important assist given to GTEC by GTI was the latter's development of a four-phase system construction plan that would allow GTEC to promise the provision of CATV service at a date earlier than the other applicants and, indeed, earlier than the very tight time schedule of construction required by the Bloomington and Normal CATV ordinances.¹² (JA 173-74, 212, 226-30, 477-78, 503).

GTEC's employee who was responsible for coordinating the franchise activities with GTI stated that "this plan of construction was one of the major points in favor of GTEC's bid and a lack of such a plan was a point against the two competitive bids" (JA 478). At the time that GTI helped develop the four-phase construction plan for GTEC's application, the City Councils of Bloomington and Normal had not yet accepted bids for CATV systems and GTI had no knowledge as to how many applicants, other than GTEC, would propose a channel service offering (JA 210-11).

On May 22, 1968, the Operating Vice President of GTI directed the telephone company's Chief Engineer to "initiate a project to engineer and install a CATV system in Bloomington-Normal on an expedited basis" (JA 469). The memorandum noted that "a call to Clare Bristol of GTEC can tell you the first area to start in" (JA 469). At the time of the foregoing directive, GTI similarly did not know how many applicants might propose a channel service (JA 210-11). Indeed, GTI's CATV tariff of that time provided that a potential customer had first to obtain a franchise in cities such as Bloomington and Normal where franchises were required before the telephone company would begin work on the CATV facilities (JA 464-65).

On May 28, 1968, at the request of GTEC, GTI engineers participated in measuring the strength of television signals for their possible carriage by GTEC's proposed CATV systems (JA 470-73).

Although six companies had indicated an interest in a CATV franchise in Bloomington as of March 13, 1967 (JA 549-50), only three filed by the May 29, 1968 deadline. The applicants were GTEC, TeleCable and Perfect Picture. Because of their close proximity to each other the cities of Bloomington and Normal had determined to move jointly

¹²The CATV ordinances passed by Bloomington and Normal were identical (JA 226-30).

in considering CATV applications, and in that regard, they had created a CATV advisory committee composed of the city managers and city attorneys for both cities. The three applications remained with this committee until the end of July, 1968, and not until the middle of July did the committee communicate with any of the applicants (JA 181-82, 484).

Notwithstanding the fact that three applications were pending before the City Councils of Bloomington and Normal, GTI continued to render active assistance to GTEC after the May 29th filing date. In fact, the evidence established that GTI actually proceeded "with material ordering and engineering" for GTEC's proposed CATV operation while the applications were pending before the Bloomington-Normal councils (JA 482-484).

The CATV franchise application of GTEC proposed the construction of distribution facilities by GTI under a channel service tariff (JA 231-48). The applications of Perfect Picture and TeleCable proposed the construction of distribution facilities by the CATV company on utility poles (JA 164; Supp. App. 2). Perfect Picture had requested a pole attachment agreement from GTI on a number of occasions (JA 118, 162-64). While GTI never gave Perfect Picture a definite "no" to their requests, the representatives of Perfect Picture reached the understanding that GTI would not voluntarily grant a pole lease agreement to them (JA 117-18, 123-25, 168-69). Perfect Picture believed that if it was awarded the franchise, enough external pressure would be exerted on GTI by the cities of Bloomington and Normal to force the telephone company eventually to permit CATV attachments to its poles (JA 123-25, 168-69, 401-04).

Although Perfect Picture realized the necessity of using GTI poles, its franchise bid did not condition performance on obtaining a pole attachment agreement. Perfect Picture, however, did condition performance on a grant of a distant signal authorization by the FCC. Realizing that such an authorization would take some months, Perfect Picture intended to exert pressure on GTI for a pole attachment agreement during that period and thus avoid nonperformance penalties under the CATV ordinance (JA 164-66, 168-69). Perfect Picture rejected the idea of building an underground system because of the prohibitive cost (JA 168).

Because of its awareness of the policy of most telephone companies not to negotiate

pole attachment agreements until after a company has been awarded a CATV franchise, TeleCable did not contact GTI regarding a pole attachment agreement (Supp. App. 2).

However, TeleCable did condition its bid on its ability to negotiate pole attachment agreements at a reasonable price.¹³ The President of TeleCable explained his concern as follows: "Realizing that the telephone company or its subsidiary was a bidder, it appeared to me that we risked the possibility of being unable to negotiate promptly a pole attachment agreement with a possibly disgruntled competitor, were we to receive the franchise" (JA 174).

The ordinances of Bloomington and Normal contained a provision which "discouraged" the "duplication of pole lines" (JA 174-75). TeleCable understood from conversations with representatives of Bloomington and Normal that the foregoing provision amounted to an absolute prohibition on the setting of any new poles by the CATV franchisee (Supp. App. 4b-5b).

Subsequently, through a telephone call from the Bloomington-Normal CATV Committee, TeleCable was advised that while the cities wished to discourage the setting of new poles, the ordinance provision was not intended as an absolute prohibition on new poles (JA 404). In light of this information, TeleCable stated that it would remove the condition on its bidding regarding the ability to negotiate pole attachment agreements (Supp. App. 3; JA 404-05). If awarded the CATV franchise, TeleCable intended to negotiate pole lease agreements with the local utility companies. However, TeleCable believed that the authority to set its own poles under the Ordinance would create public pressure on "the telephone company or any owner of poles" to grant pole lease agreements (Supp. App. 3). Irrespective of the adverse public reaction to the setting of new poles, TeleCable never considered constructing an entire system on its own poles because the "cost would be prohibitive" in downtown areas of the city where the setting of a new pole requires breaking into sidewalks or streets (JA 225-26).

¹³TeleCable did not learn until the joint hearings on the three applications in August, 1968, that a pole attachment agreement from GTI might not be available at any price (JA 524-25).

The authority of GTI to set poles for its communications lines is contained in franchises awarded by the cities of Bloomington and Normal (JA 425-26). In 1968, it appears that GTI owned approximately 30 percent of the utility poles in Bloomington-Normal, and Illinois Power Company, a local electric utility, owned the remaining poles (JA 520). However, by a contract executed in March 1967, GTI and Illinois Power had agreed to balance the ownership of all utility poles in their areas of common operation in the State of Illinois (JA 365-99). This joint use agreement also granted to GTI and Illinois Power certain primary rights on poles owned by the other with respect to any third party user such as a CATV operator. In addition to granting GTI an exclusive right to two feet of pole space on all utility poles owned by Illinois Power, the joint use agreement provided that

Pole space to be occupied by a third party shall be assigned by the owner of the pole with the concurrence of the other primary user. The assignment of such space and usage by a third party is subordinate to the rights and present and future requirements for space by the other primary user. (JA 383).

Thus, not only did GTI own 30 percent of the poles in Bloomington-Normal outright, but through the Agreement with Illinois Power, GTI had the power to prevent the lease of space to CATV operators on the remaining 70 percent of the poles, i.e. those owned by Illinois Power, if in GTI's judgment such space might be needed for "future requirements."¹⁴ As noted in its CATV policy statement, the General System strongly believed that the ability to provide CATV distribution facilities was both a present and future "requirement" of General Telephone Companies (JA 437).

The Joint Pole Use Agreement provided GTI with a further power to control the construction of distribution facilities in Bloomington-Normal. It required GTI to purchase from Illinois Power a sufficient number of poles so that the ownership of poles in their common areas of operation would be relatively equal (JA 370-71). Since the Illinois Power Company owned about 70 percent of the poles in the areas of common operation in the

¹⁴ Because there is relatively little unused space on the typical utility pole, any exercise by GTI of its right to reserve space on Illinois Power poles for future requirements almost certainly would have prevented CATV attachments to such poles (JA 169-73, 214-16, 367, 383).

State of Illinois, the Joint Use Agreement required GTI to purchase a considerable number of poles from Illinois Power (JA 216-18). GTI presumably could purchase poles from Illinois Power in any particular location it wished, and once having purchased a pole, GTI's power to grant or deny third party attachments to that pole became absolute (JA 217-18). In fact, the Operating Vice President of GTI testified that the poles which it was purchasing from Illinois Power would not be available to a CATV Company to attach cables (JA 218).

The CATV Committee of Bloomington-Normal made its recommendation regarding the applications of GTEC, TeleCable and Perfect Picture to the joint councils during the first week of August 1968. The Committee report stated, in part, that "The GT&E offer has no reservation on a pole attachment agreement, whereas there is a slight question on TeleCable." (JA 257).

The councils thus were advised that the ability to perform of either TeleCable or Perfect Picture was dependent, at least in part, on the availability of pole attachment rights from GTI. Since GTEC initially had proposed to lease a channel service offering from GTI, it had no requirement for pole space. However, shortly before the CATV franchise hearing, the CATV Committee was informed of the Commission's holding in *General Tel. Co. of Cal.* and the consequent possibility that GTI might not be authorized to construct facilities for an affiliated CATV operator.¹⁵ (JA 399-400). GTEC advised Bloomington-Normal officials that if actions of the Commission unduly delayed construction of the system by GTI, GTEC would construct its own facilities (JA 128-29). GTEC did not explain how it would construct, but created the impression that it would build a traditional CATV system using pole attachments just as it had built them in other communities where it had not used a channel service offering.¹⁶ (JA 135-36).

¹⁵ 13 FCC 2d 448, June 25, 1968. The General System, of course, was acutely aware of the Commission's holding since a number of General Telephone companies were parties to the proceeding. Moreover, General well knew from the clear statement in the Commission's decision concerning the inherent dangers of anticompetitive practices resulting from CATV affiliation with telephone companies that GTI would not receive Commission approval to build CATV facilities for GTEC. (See text *infra*, p. 31).

¹⁶ GTEC constructed its own CATV facilities in several communities where it purchased an outstanding franchise or a partially built system from an independent CATV operator (JA 139-43, 561-68).

Therefore, on the date of the joint hearings in August, 1968, the joint councils of Bloomington and Normal were faced with the situation where all three applicants apparently were proposing systems which would require the attachment of their cables to GTI poles. With full knowledge of the purpose of the proceeding, GTI sent an employee to represent it at the joint hearing (JA 220-22). When asked direct questions by council members, the GTI representative refused to state whether or not the telephone company would grant pole attachments for CATV systems, although he then knew that GTI's policy was not to grant such rights (Supp. App. 4-5).

At the conclusion of the hearing the joint council retired to an executive session to decide which application to grant (JA 195-97). Based on the information then before it the joint council logically could have concluded that the GTI policy concerning pole attachment agreements was unsettled, but that neither Perfect Picture nor TeleCable was likely to obtain such an agreement.¹⁷ (JA 223-24). Two points were quite clear, however. The councils wanted timely service, and they did not want to get involved in disputes between GTI and the CATV franchise regarding performance (JA 193). As the Commission stated, "The city fathers who were anxious to obtain CATV service at the earliest possible time, hardly could fail to realize that while the road to service with GTEC might be smooth, that road with TeleCable or Perfect Picture could very well be strewn with numerous obstacles from the local telephone company whose affiliated corporation had been denied the bid." (JA 596).

Because the actual award of the CATV franchises to GTEC was a legislative action by the respective councils, it is impossible to determine the precise subjective reasoning of each voting council member (JA 195-97). The city attorneys of Bloomington and Normal who participated, but did not vote, in the executive session of the joint councils testified that council members recognized the "built in advantage" of GTEC because of its affiliation with GTI (JA 400-01). The advantage of the relationship of GTEC with GTI as expressed

¹⁷The cross-examination of the employee who represented GTI at the hearing is revealing of the culpable intent of GTI to confuse the Bloomington-Normal councils to the advantage of its affiliated company (Supp. App. 4-5). A report of the meeting, acknowledged to be accurate, showed that when asked specifically if GTI would lease to Perfect Picture or TeleCable, Mr. Malone (GTI's employee) said "I have no answer pro or con," and that other attempts to get an answer resulted in the same response (JA 221-22, 223-24).

by council members concerned "pole attachments." (JA 203-04). The councils thereafter awarded GTEC the Bloomington-Normal CATV franchises (JA 534-37).

The Commission found on the basis of the record that the "advantage" of the relationship between GTI and GTEC "was one of the matters considered by the councils in deliberating which applicant should receive the award." (JA 596). However, contrary to the entire thrust of Appellant's brief, the Commission did not seek to interfere in the granting of CATV franchises by local governing bodies. Rather, the Commission held that it could not "permit a common carrier to engage in unlawful, unfair or unreasonable acts of discrimination in connection with its operations." (JA 597). Thus, irrespective of the *effectiveness* of the concerted efforts of the General System companies to exploit the relationship of GTI and GTEC in the CATV franchise matter, the Commission ruled that the *efforts* alone were unlawful and required its action (JA 596-98).

III. GTI CONTRIBUTED ESSENTIAL ASSISTANCE TO GTEC IN THE CONSTRUCTION OF THE BLOOMINGTON-NORMAL CATV SYSTEM

Shortly after receiving the franchise, GTEC personnel met with eleven representatives of GTI to coordinate the construction of the Bloomington-Normal CATV system within the time frame promised by GTEC's bid (JA 477-81). GTI, in fact, took several significant actions to accommodate GTEC's performance schedule. Since insufficient money was budgeted for CATV construction during the relevant period, the Operating Vice President of GTI instructed his Chief Engineer to reduce "telephone outside plant gross additions in an amount equal to the CATV addition." (JA 219-20, 515). The decision was tentatively made to have the system constructed by Jerrold Electronics Corporation, an independent contractor rather than GTI for a number of reasons, including "the critical timing on this project" and "in case the FCC turns down our filing, a contract job would make it easier to turn the project over to GTEC" (JA 121-23, 537-38). As the Commission stated, this "'escape' plan was possible only because of the affiliation of GTI and GTEC and the manner in which advantage was taken of the affiliation." (JA 594).

On October 3, 1968, GTI sent its application for a 214 certificate to the FCC. As

of October 23, 1968, GTI still did not have a signed "Service Order from GTEC" for the facilities that it sought to be certified (JA 517-19). On October 21, 1968 TeleCable filed its "Petition to Deny Application for Section 214 Certification." By letter of October 24, 1968, the Commission asked GTI to answer several questions relating to its 214 application, including specific inquiries concerning GTI's pole attachment policy. A response to the Commission's letter required a disclosure of whether GTI would grant pole attachment rights to CATV systems (JA 450-51). Since GTI had specifically refused to grant such rights to Perfect Picture, it obviously could not tell the Commission that its affiliate, GTEC, would be given pole attachment rights. An employee of GTI, therefore, devised a plan whereby GTEC would "construct a CATV system in Bloomington-Normal without a pole rental agreement with General Telephone Company of Illinois" (JA 486-87). The plan proposed:

"1. That 37% of the plant would be placed on power company poles, which the telephone company does not contact.

"2. That 28% of the plant would be placed on power company poles presently under Joint Use Agreement with the telephone company.

"3. That 35% of the plant would be direct buried." (JA 486-87).

This plan was adopted and GTEC, on March 17, 1969, signed an agreement with Jerrold Electronics Corporation to construct the system. Jerrold, of course, was the same contractor that was to build the identical facilities for GTI. The Commission noted that the "[f]inancing would be provided by GT&E, the common parent of both GTI and GTEC. Thus, the General System, through the close cooperation of its affiliated corporations, would control the wires and distribution facilities in the cities served by GTI pursuant to the policy set by Service Corporation [GTES]." (JA 593-94).

On the same date, April 9, 1969, that GTEC directed Jerrold to proceed with the construction of CATV facilities in Bloomington-Normal,¹⁸ GTI requested the dismissal of its application for 214 authorities to construct such facilities (JA 543).

¹⁸ By letter of March 25, 1969, the Commission advised GTI and GTEC "that any construction of the described facilities which is or will be undertaken by you will be at the risk of later Commission action on the pleadings." (JA 539-40).

GTEC's construction plans, however, still faced two major problems: the "make-ready" or "change-outs"¹⁹ of the poles jointly used by GTI and Illinois Power, and the Joint Use Agreement that granted GTI prior rights *vis a vis* GTEC on all poles and required GTI to purchase some 1500 poles from Illinois Power by March, 1971 (JA 489-90, 521). Because telephone companies frequently indicate to CATV operators that they have limited crews for this activity, delays in change-outs and make-ready are common (JA 173). It was partially in fear of such delays that TeleCable conditioned its bid for CATV in Bloomington-Normal (JA 173-74).

GTEC, however, had no such concern over possible delays in make-ready (JA 149). GTEC's confidence was well founded because after being advised that it otherwise would be impossible to meet GTEC's promised performance date of June 19, 1969, GTI condoned "temporary violations" in its exclusive pole space by GTEC cables (JA 218-19, 491-93, 523). Thus, rather than require the replacement of an inadequate pole or respacing of telephone lines as is typically the telephone company position in CATV construction, GTI permitted GTEC to attach cables "temporarily" in its communications space in order for GTEC to commence service in phase I by June 19, 1969. (*Ibid.*)²⁰

Resolving the problem posed by the "Joint Pole Use Agreement" required even greater sleight of hand. As of May 22, 1969, GTEC had contracted to attach its cables

¹⁹The term "make-ready" means the respacing of the power company and/or telephone wires to provide space on the pole for the CATV cable (JA 173). The term "change-out" means the replacement of a pole that is of inadequate length to provide space for the power, telephone and CATV lines (JA 173). In the typical situation the power lines occupy the upper four feet of space on a pole and since the CATV cable and/or telephone lines must be at least 40 inches below the lowest power line, virtually all of make-ready involves the respacing of telephone lines (JA 169-72, 359-64). The telephone company respaces its lines so that they are the lowest lines on the pole (although still at a minimum clearance above the street level) and the CATV cable must be at least 12 inches above the telephone lines and 40 inches below the lowest power line (JA 171-72, 214, 358-64). The cost of make-ready and change-outs is borne by the CATV operator (JA 171-72). Under the Joint Use Agreement such changes are paid to the owner of the pole who in turn reimburses the other primary user (JA 365-89). The replacement of a pole traditionally will run from \$60 to as high as \$500 per pole (JA 173).

²⁰That GTI would not have given such extraordinary privileges to a non-affiliated CATV operator is clear from the General System's CATV policy statement concerning CATV attachments in telephone pole space:

"Customer owned and attached cable plant in telephone company space must be constantly checked for plant infractions. Effecting corrections is costly and time consuming."
(JA 438).

to 1703 Illinois Power poles that were jointly used by GTI (JA 527-28), and GTI had prior rights under the "Joint Pole Use Agreement" on the 1213 poles of Illinois Power to which GTEC proposed to attach its cables (JA 522). GTEC had been advised by Illinois Power Company on April 9, 1969 that "the location of CATV equipment on each pole will be specified by Illinois Power Company — such specification will be subject to the prior rights of the General Telephone Company" (JA 538, 541-42). GTI helped GTEC over this hurdle by inaction. GTI *did not* exercise its right to concur in the assignment of space to GTEC (JA 207-08, 383). GTI made *no determination* of whether the space to be utilized by GTEC would be needed for "current and future" telephone requirements (see JA 383, 438). These omissions, of course, were contrary to the best interests of GTI's telephone business.²¹

Inaction, however, could not avoid the requirements under the Joint Use Agreement that GTI balance its ownership of utility poles in areas of common operation with Illinois Power, and, under normal practice, this requirement could have resulted in GTI's purchase of poles to which GTEC had attached cables, a circumstance which the General System obviously feared would increase the danger of Commission action (JA 521). GTI, therefore, determined that it would not purchase any poles from Illinois Power to which GTEC had attached cables. This fabricated policy actually had to be extended not just to the poles to which GTEC had attached in the Phase I construction of the system, but to the entire Bloomington-Normal area. Otherwise, consistency in GTI's policy of not granting pole attachments would have effectively blocked GTEC from completing the construction Phases II, III and IV of the CATV system (JA 210, 217-18).

The record fully supports the Commission's conclusion that GTI's refusal to permit CATV pole attachments while at the same time assisting GTEC in every conceivable way to construct a CATV system in Bloomington-Normal was part of a concerted action to obtain the distribution facilities for the General System. The Commission thus stated:

Except for the corporate affiliation, GTI's conduct with respect to the use of the poles would have been contrary to its own best financial interest, since it was thereby deprived of income not only from a lease back of channel facilities but from a rental of poles. However, while it

²¹ See JA 436-40 .

appears on the surface that a loss would be suffered, in fact this was true only to a limited extent. If permitted to operate, GTEC will derive an income from the CATV systems and, under the accounting practices and the method of dividend distribution adopted by the General System companies, GTI will benefit from that income. Moreover, any possible disadvantage to GTI was more than outweighed by the fact that operation by GTEC rather than an independent operator would better serve the long range overall policy of GT&E that control of the cable facilities in a community served by one of its operating telephone companies be retained by a General System Company. Manifestly the alternative plan for construction by GTEC was intended to achieve that objective while avoiding and evading the hearing which would be required under Section 214 of the Act by reason of the objections which had been interposed to certification. (JA 594-95).

The Commission further held that on the facts and circumstances developed in the hearing, it was justified in piercing the corporate veil of the General companies, and in finding that construction of the CATV facilities by GTEC legally was the same as construction by GTI. Such construction, therefore, was subject to the certification requirements of Section 214 of the Communications Act. The Commission further ruled that GTI, through its efforts to assist GTEC and to create disadvantages for non-affiliated CATV applicants, had engaged in unlawful, unfair and unreasonable acts of discrimination in violation of Section 202(a) of the Act.

Finally, the Commission ordered GT&E, GTEC and GTI to cease and desist from the construction and operation of CATV distribution facilities in Bloomington-Normal until Section 214 certification is obtained.²²

²² This Court should be made aware of the fact that Appellant's fears that the Commission's Decision would cost it the loss of \$400,000 in performance bonds no longer have any foundation. Such forfeiture was avoided by the Commission's Stay Order of September 26, 1969. That Stay was issued after an agreement was reached between TeleCable and GTEC whereby TeleCable will purchase the CATV in Bloomington-Normal at cost if the Commission's Decision is upheld. See Order (JA 601-02) and Order (JA 603-04), released September 26, 1969.

SUMMARY OF ARGUMENT

GT&E, through the coordinated and concerted activities of its subsidiaries, GTI, GTEC and GTES, conspired, attempted and ultimately succeeded in extending the monopoly of the General System over interstate wire communications to the homes in Bloomington and Normal, Illinois to include CATV facilities.

The Commission properly held that Section 214 of the Communications Act applied to the construction of these CATV facilities by a communications common carrier such as GTI, and that Section 214 and the Commission's Decision in *General Tel. Co. of Cal.*, 13 FCC 2d 448 (1968), *aff'd.* — U.S. App. D.C. —, 413 F. 2d 390 (1969), were intended to allow Commission consideration of the impact of such construction, and the anticompetitive activities involved, on the public interest.

Under the facts of the case, the Commission further properly pierced the corporate veil of GTEC and GTI to prevent a subversion of regulation designed to protect the public interest from the very activities engaged in by the General System.

Finally, the Commission's procedures were consistent with the requirements of Section 312(d) of the Communications Act. Moreover, no material finding of fact or conclusion of law in the Decision was based upon an asserted failure of appellant to meet either a burden of production or a burden of persuasion. Appellant was thus not prejudiced by the allocation of the burden of proof, and the Commission should not be reversed for alleged error on this point.

The Commission's decision being supported by substantial evidence on all material findings and conclusions, the Court should affirm the issuance of a cease and desist order herein.

ARGUMENT

I. THE COMMISSION PROPERLY HELD THAT CONSTRUCTION OF THE CATV FACILITIES IN ISSUE BY GTI OR GTEC REQUIRED PRIOR CERTIFICATION PURSUANT TO SECTION 214 OF THE COMMUNICATIONS ACT

A. The Commission Was Correct in Holding That Construction of These Facilities by GTI Would Have Required Certification Under Section 214

The Commission first correctly holds that the construction and operation of CATV channel distribution facilities by GTI would have required certification pursuant to Section 214. *General Tel. Co. of Cal.*, 13 FCC 2d 448 (1968), *aff'd*, ____ U.S. App. D.C. ____, 413 F. 2d 390 (1969), *cert. denied*, 396 U.S. 888 (1969). (JA 591).

The *General Tel. Co. of Cal.* case held that the certification requirements of Section 214 of the Act apply to communications common carriers, including so-called connecting carriers, constructing and operating channel service facilities for CATV operators. That holding is as applicable to a CATV system owned and operated directly by the carrier as it is to facilities operated by the carrier as a common carrier offering for CATV operators.²³

Section 214 reads:

No *carrier* shall undertake the construction of a new *line* . . . unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction or operation, or construction and operation, of such additional or extended line As used in this section the term 'line' means *any channel of communication* 47 U.S.C. 214(a) (emphasis added).

²³We do not suggest that CATV is a common carrier. (See Brief of Appellant at 21.) Thus, construction of a CATV system by a truly independent CATV operator would not be covered by Section 214. That Section only applies to carriers. And there is good reason for thus treating carriers and non-carriers differently. It is precisely because a carrier has both special responsibilities in serving the public, and corresponding special monopoly privileges to allow for such service, that Section 214 is designed to protect the public interest by prohibiting construction by the carrier that would either endanger its existing service, or unreasonably extend its monopoly, or otherwise adversely affect the public interest in wire and radio communications.

Section 214 on its face applies to any new line built by a carrier, and line means "any channel of communications," not just a common carrier channel.²⁴ Since a privately-operated CATV system is an interstate channel of communication,²⁵ it is included within the scope of Section 214 when constructed and operated by a carrier.²⁶

B. The Commission Was Correct in Disregarding the Corporate Entity and Holding GTEC Subject to the Same Certification Requirements as GTI

1. *Legal Precedent Supports Disregarding the Corporate Entity Given the Purpose and Nature of the Concerted Activities of GTI and GTEC*

Appellant contends, however, that notwithstanding the applicability of Section 214 to GTI, certification is still not required because the facilities under consideration were built by GTEC, not GTI.²⁷ Appellant argues that, unlike GTI, GTEC is not a common carrier, that GTI and GTEC are separate corporations, and that since Section 214 applies only to construction by carriers, its certification requirements cannot be applied here.

²⁴ Compare Section 202(b), which speaks of "common carrier lines of communication." 47 U.S.C. 202(b).

²⁵ *United States v. Southwestern Cable Co.*, 392 U.S. 157, 168-69 (1968).

²⁶ Appellant cites *New York Central R.R. v. Southern Ry.*, 226 F. Supp. 463, 474-75 (N.D. Ill., 1964), *aff'd* 338 F.2d 667 (7th Cir.), *cert. denied* 380 U.S. 954 (1965) in support of his assertion that lines constructed by carriers for their private use do not require certification. In fact, that case stands for precisely the opposite. In that case, certification was not required where the carrier engaged in non-common carrier service over track facilities built, owned and operated by its private customer. But the district court, having analyzed the precedents, expressly recognized that certification was required even for non-common carrier service by a carrier where the carrier built, maintained or assisted in maintaining the private facilities. See 226 F. Supp. at 471-73. In the instant case, the CATV facilities were completely built, owned and maintained by the carrier (*i.e.*, GTI/GTEC), not the customer (*i.e.*, subscriber).

American Tel. & Tel. Co., 2 F.C.C. 308 (1936), also cited by appellant for the above proposition, likewise supports the appellee, not appellant. In that case, exemption from Section 214 was asserted by AT&T solely because the line was experimental and non-commercial, not because it was for non-common carrier use (2 F.C.C. at 309). Even so, the Commission found that it *did* have jurisdiction under Section 214 over the *construction*, if not yet the operation, of the facilities, and *issued a certificate* for that construction after finding that the proposed uses of the facilities would serve the public convenience and necessity (2 F.C.C. at 310-11).

²⁷ See Note 23, *supra*.

The Commission's own words adequately answer this argument:

The fact that GTI and GTEC are separate corporate entities is not determinative. Where the ownership of stock is used to dominate and control the subsidiary in such manner and to such extent that it becomes a mere agency or instrumentality of the parent, the separate corporate entities may be disregarded. [Footnote citing *United States v. Lehigh Valley R.R.*, 220 U.S. 257, (1911).]²⁸ Furthermore, separate corporate structures may be ignored where the purpose of a statutory scheme or regulation would otherwise be frustrated. [Footnote citing *Kavanaugh v. Ford Motor*, 353 F. 2d 710 (1965); *Mansfield Journal Co. v. FCC*, 180 F. 2d 28 (1950).] (JA 592).

In *Corn Products Refining Co. v. Benson*, 232 F. 2d 554, 565 (2d Cir. 1956), the Second Circuit, recognizing that piercing the corporate veil for one specific purpose did not require doing so for other or all purposes, stated, "The existence of a separate corporate entity should not be permitted to frustrate the purpose of a federal regulatory statute - 'corporate entity may be disregarded when failure to do so would enable the corporation device to be used to circumvent a statute.' [Citations omitted]"

Kavanaugh v. Ford Motor Co., cited above by the Commission, particularly supports the notion that the corporate veil may be pierced where it has been *adopted* or *used* to evade the provisions of a statute.

And in *NLRB v. Deena Artware*, 361 U.S. 398 (1960), the Supreme Court recognized that numerous situations might warrant disregarding the corporate entity, and stated that "the [NLRB] is entitled to show that these separate corporations are not what they appear to be, that in truth they are but divisions or departments of a 'single enterprise.'" 361 U.S. at 398.²⁹

²⁸ The *Lehigh Valley* case involves more than an application of agency doctrine to a parent-subsidary relationship. Its language holds that where two affiliated corporations act, not in their independent interests as bona fide separate entities, but rather in a combined, dependent and unified interest, virtually as one, they may be regarded as one in connection with such activity, particularly where that activity attempts to use the corporate fiction to avoid a statutory prohibition.

²⁹ At least one writer has attacked the many tests laid down by the courts for guides because of their illusory nature and lack of intelligible principle:

"What the formula comes down to, once shorn of verbiage about control, instrumentality, agency and corporate entity, is that liability is imposed to reach an equitable result." Latty, *Subsidiaries & Affiliated Corporations*, 191 (1936). This thesis finds support from *In re Clarke's Will*, 204 Minn. 574, 284 N.W. 876 (1939).

On the facts of this case, the Commission was overwhelmingly justified in piercing the corporate veil.³⁰ The General System had a corporate policy of attempting to monopolize cable distribution systems to the homes in the areas served by its operating telephone subsidiaries.³¹ This policy was developed by the Service Corporation, the policy-making, personnel-assigning alter ego of GT&E,³² and was implemented by the operating subsidiaries, GTI and GTEC, in Bloomington-Normal.

During the competitive phase of the franchise contest, GTEC was used as a threat by GTI to coerce Perfect Picture into committing itself to taking GTI's channel service offering.³³ When Perfect Picture refused to make such a commitment, GTEC became an applicant to preclude the award of the franchises to a nonaffiliated competitor who, by building his own facilities, might disrupt the General System's monopoly over communications facilities in Bloomington-Normal.³⁴ After securing the franchise, GTEC instead of GTI, was used to build the CATV facilities for the purpose of avoiding regulation by the FCC.³⁵

Meanwhile, GTI pursued the System policy and monopolistic goal by (a) refusing pole

³⁰ Appellant's claim that "... in the last analysis, it is GTEC's affiliation with the carrier, GTI, standing alone, which condemned it" [Brief for Appellant, p. 20] has no foundation in the facts or decision in this case. See following discussion and the Decision (JA 592-95).

³¹ (JA 577, 596-98); see text *supra*, p. 4-5 and record references cited therein.

³² (JA 574-75, 577, 592-93); see text *supra*, pp. 3-6 and record references cited therein.

³³ (JA 581); see text *supra*, pp. 9-10 and record references cited therein.

³⁴ (JA 592-93); see text *supra*, pp. 6, 8-10 and record references cited therein.

This end was assured whether GTEC took a channel service offering from GTI or built its own facilities.

³⁵ (JA 589-90, 593-94); see text *supra*, pp. 17, 19-20 and record references cited therein. Construction by GTEC changed none of the anticompetitive, antipublic interest conditions which the *General Tel. Co. of Cal.* case was aimed at prohibiting. [See text *infra*, p. 31] It merely sought to avoid regulation under that case by having GTEC rather than GTI sign the construction contract with Jerrold, thereby hoping to find protection solely from their "separate" corporate identity. (JA 593-94)

Appellant argues that "GTEC's 'escape plan' was not dissimilar to the approach taken by TeleCable. TeleCable planned to use the poles of the existing utility, but in order to ensure its ability to perform it received assurances that the cities would permit it to set its own poles if need be." Brief of Appellant, p. 33 n. 64. But the distinction between these two "escape plans" is crucial to the case. GTEC's plan was designed to circumvent regulation by the Commission of the General System's anti-competitive activities, while TeleCable's plan was designed to avoid being injured by those very anti-competitive practices.

attachment agreements for the express purpose of protecting the companies monopoly over wire communications;³⁶ and (b) offering and giving substantial assistance to GTEC that went far beyond actions in its own separate corporate interest.³⁷ Finally, after award of the franchise and initiation of the "escape plan," GTI gave assistance to GTEC that was necessary for the successful implementation of that plan.³⁸

The coordinated and concerted activities of GTI and GTEC in implementing the unitary, anticompetitive policy of the General System, which both in intent and effect attempted to evade the purpose of, and regulation pursuant to, Section 214, warranted piercing the corporate veil.³⁹

2. *The Purpose and Object of Section 214 Do Apply to the Activities of GTI and GTEC, and the Subterfuge of Using GTEC to Construct and Operate the Facilities Does Threaten the Integrity of That Section*

Appellant contends that the Decision, however, is "foreign" to the "purpose and objective" of Section 214. Appellant argues that holdings under Section 1(18) of the Interstate Commerce Act, 49 U.S.C. § 1(18), are "relevant, indeed conclusive" to a

³⁶(JA 578-79, 592-93); see text *supra*, pp. 5, 7-8 and record references cited therein.

³⁷(JA 585-87, 593); see text *supra*, pp. 9-13 and record references cited therein.

³⁸(JA 589, 590, 593-95); see text *supra*, pp. 19-22 and record references cited therein.

³⁹The cases cited by Appellant (Brief of Appellant at 34) in support of maintaining regard for corporate identity are not persuasive on the facts of this case.

Press Co. v. NLRB, 73 U.S. App. D.C. 103, 118 F.2d 937 (1940), *cert. denied*, 313 U.S. 595 (1941) held that on the facts of the case a parent could not be charged with the unfair labor practice committed by its subsidiary. But there existed no equitable grounds for an opposite holding; the parent was not using the subsidiary to avoid statutory regulation; the court noted the absence of any evidence even tending to show that the subsidiary was not completely self-governing; the evidence showed the subsidiary made its own policies; and the parent had done nothing to aid and abet the unfair labor practice committed by its subsidiary (the *Press Co.* case was distinguished on this latter ground in *Bethlehem Steel Co. v. NLRB*, 74 U.S. App. D.C. 52, 61, 120 F.2d 641, 650 (1941)).

In *United States v. Martin*, 337 F.2d 171 (8th Cir. 1964), the court in refusing on the facts to disregard the corporate entity (it was argued that a mere transfer of control of a corporation was equivalent to dissolution for certain tax purposes) recognized that the corporate entity could be disregarded if, *inter alia*, it is used as an intermediary to promote injustice. But the court found none of the transactions there involved "... to have been fraudulent, illegal or improper in any respect." 337 F.2d at 175.

proper interpretation of Section 214 [Brief of Appellant, p. 23]. From an analysis of such holdings, Appellant argues that the purpose and basis of certificate jurisdiction under Section 214(a) "... is the public interest in preserving the economic health of common carriers and their ability to furnish adequate service at reasonable rates"⁴⁰ [Brief of Appellant, p. 24]. Appellant further argues from these ICC cases that Section 214 is designed to protect such carriers from wasteful duplication of service, but only duplication of competing *common carrier* facilities, and that "any competitive effect on anyone other than a *common carrier* is irrelevant in a Section 214 proceeding." [Brief of Appellant, p. 25].

Appellant's statement of the purpose and basis of certificate jurisdiction of Section 214 is fatally incorrect. In *Carter Mountain Transmissions Corp. v. FCC*, 116 U.S. App. D.C. 93, 321 F.2d 359 (1963), this Court expressly rejected this "stilted" interpretation of the Communications Act. *General Tel. Co. of Cal. v. FCC*, ____ U.S. App. D.C. ____, 413 F.2d 390, 399 (1969).

It was argued in *Carter Mountain*⁴¹ that under the Communications Act common carriers are regulated in analogy to regulation of rail and motor carriers under the Interstate Commerce Act. It was held, however, that "questions of competitive injury in the transportation field are very different from questions of public injury in the field of communications," and that the rationale of analogous decisions under the Interstate Commerce Act were not determinative of the Commission's obligations under Section 214. Rather this Court concluded that Section 214 was to be interpreted and applied in light of the obligations of the FCC in regulating both communication common carriers and broadcasters and its responsibility in both fields to "make available, so far as possible, to all the people of the United States,"⁴² adequate and efficient service."⁴³

⁴⁰ Appellant further states that this Court recognized that the aim of Section 214 was "... to enable the Commission to prevent the wasteful duplication of common carrier facilities. . .", citing *General Tel. Co. of Cal. v. FCC*, 413 F.2d at 403. But this Court was there discussing only the meaning of the exemption of Section 214(a)(2), and did not even make the above finding. In any event, Section 214 may in part be directed to the above purpose, but it is not so limited. See text *infra*, p. 31 n. 44.

⁴¹ In *Carter Mountain*, the determinative factor was the competitive impact of a proposed communications common carrier facility on the competitor (a TV station) of the carrier's customer (a CATV system). That competitor was not a carrier.

⁴² See Section 1 of the Communications Act of 1934, as amended, 47 U.S.C. §151.

⁴³ 116 U.S. App. D.C. at 96; 321 F.2d at 362. The Commission has noted in its recent decision requiring CATV systems to originate programming that CATV has the capacity to "promote the basic purpose for which this Commission was created." First Report and Order in Docket No. 18397, FCC 69-1170, released October 27, 1969.

Any doubts as to the significance of *Carter Mountain* and its applicability to Section 214 were completely laid to rest by this Court's opinion in *General Tel. Co. of Cal. v. FCC*, *supra*. The Court reaffirmed its holding in *Carter Mountain*, stating that that case had "... emphasized the soundness of allowing the Commission to consider its total regulatory responsibilities when dealing with problems within a particular area of its jurisdiction. . . ." ____ U.S. App. D.C. at ____, 413 F. 2d at 399-400. In the instant case the Commission correctly held that the purpose of Section 214 was in part to allow, if not require, consideration of the anticompetitive practices of common carriers in connection with interstate wire communications. The use of GTEC by the General System to avoid the requirements of Section 214 manifestly threatened the integrity of that Section. (See JA 594-95).

The General System was not merely seeking to avoid Commission consideration of a 214 certification application. It was attempting to place beyond the Commission's reach activities which General well knew were contrary to the Commission's announced policy under Section 214. In *Gen. Tel. Co. of Cal.*, in discussing whether cease and desist orders should issue for violation of Section 214, the Commission stated:

A factor militating against relief of a common carrier from the cease and desist to be entered herein is the existence of an affiliation between the CATV operator and the telephone company serving the particular community, such as a parent-subsidary relationship or where both are under common control. By reason of its control over utility poles, or other local advantages resulting from its status as an existing common carrier in the community, the telephone company is in a position to preclude or to substantially delay an unaffiliated CATV system from commencing service and thereby eliminate competition. Furthermore, construction by a telephone company for an affiliated CATV operator calls for careful scrutiny on the part of the Commission in order to insure against wasteful duplication or unnecessary construction.⁴⁴ Where such an affiliation exists, therefore, it is doubtful that any sufficient equitable basis exists for according permanent relief to the carrier, and we would be inclined to deny such relief absent a showing of specially meritorious circumstances requiring a contrary conclusion in the public interest. 13 FCC 2d 448, 462-63 (1968).

⁴⁴ Note that while wasteful duplication or unnecessary construction is a valid consideration under Section 214, that Section was not so limited, and also includes consideration of anticompetitive impact and conduct. See *Hale v. FCC*, No. 22,751 (D.C. Cir., Feb. 16, 1970) (slip op. at 7-8, Judge Tamm, concurring).

This language unmistakably gave notification that the elimination of competition from independent CATV operators was not only a factor to be considered under Section 214 but was contrary to the public interest and would warrant denial of 214 certification absent "specially meritorious considerations." It is clear from this language that, based on the facts of the instant case, GTI would have been denied 214 certification for the purpose of serving GTEC. Indeed, this is undoubtedly why GTI withdrew its application for such certification when TeleCable filed a petition to deny that application.

The construction of CATV facilities in Bloomington-Normal by GTEC or GTI was designed to accomplish the precise anticompetitive results which the *General Tel. Co. of Cal.* decision expressly intended to prohibit carriers and their affiliates from accomplishing. This corporate subterfuge, in intent and effect, thus threatened the integrity of Section 214. Given not just the mere fact of affiliation between GTEC and GTI, but rather their substantial concerted and coordinated efforts to implement a uniform General System policy contrary to the public interest, the Commission was justly impelled to pierce the corporate fiction, consider GTI and GTEC to be one and the same for the purposes of this case, and hold them jointly subject to, and in violation of, the provisions of Section 214.

II. THE COMMISSION DID NOT COMMIT PREJUDICIAL ERROR IN REGARD TO ALLOCATION OF THE BURDEN OF PROOF

In its Order to Show Cause, the Commission assigned to appellants the "burden of proof" on Issues 1(b), (c) and (d).⁴⁵ Appellant argues that this allocation is contrary to the requirements of Section 312(d) of the Act.⁴⁶

⁴⁵ Order to Show Cause, (JA 70). Appellant also asserts error in the allocation of the burden of proof on other issues to TeleCable and Perfect Picture. For the reasons discussed in the text *infra*, it will be seen that the requirements of Section 312(d) were not violated. But even assuming *arguendo* error in placing part of the burden on TeleCable and Perfect Picture, appellant could not have been prejudiced thereby. Therefore, such error could not be grounds for reversal, and the point will not be further considered.

⁴⁶ "In any case where a hearing is conducted pursuant to the provisions of this section, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Commission." 47 U.S.C. §312(d).

In its Decision, the Commission responded as follows to this argument:

Respondents also contend that we were in error in placing the burden of proof on respondents with respect to the interrelationships of the respondent companies, the circumstances surrounding the withdrawal of GTI's Section 214 application, and GTEC's plans and actions with respect to construction or operation of CATV facilities in Bloomington and Normal. These matters lie uniquely within the knowledge of respondents, and the Commission is empowered to require persons engaging in activities subject to provisions of the Communications Act to provide such full and complete information concerning its management and operations as is necessary to enable the Commission to perform its duties. See *Section 218 and 219 of the Communications Act*. Our order did nothing more than require respondents to submit information which the Commission is entitled to have. (JA 598).

Appellant argues that it was error thus to turn a cease and desist proceeding into an investigation. Appellant does not contest the Commission's powers of inquiry under Section 218 or 219 [see also Section 403].⁴⁷ Rather, appellant contends that Section 312(d) requires the Commission first to conduct its investigation, and then to institute cease and desist proceedings.

But the Commission is expressly authorized under Section 4(j) of the Communications Act to "... conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice."⁴⁸ The Commission found that the public interest required an expeditious proceeding.⁴⁹ It was proper, therefore, under Section 4(j) to consolidate an inquiry under Sections 218 and 403 with a cease and desist proceeding.⁵⁰

This procedure does not conflict with the requirement of Section 312(d) that the burden of proceeding shall be on the Commission. That requirement does not prohibit the Commission from requiring a respondent to produce in a cease and desist proceeding certain information pursuant to some authorization found elsewhere in the Act. Indeed,

⁴⁷ 47 U.S.C. §§ 218, 219, 403.

⁴⁸ 47 U.S.C. § 154(j).

⁴⁹ Order to Show Cause (JA 68).

⁵⁰ The hearing was ordered pursuant to Sections 4(i), 4(j), 208, 214, 218, 312(b) and (c), and 403 of the Communications Act. Order to Show Cause (JA 68).

discovery procedures (which were used extensively by TeleCable) produce the same result, and no one contends that such procedures unlawfully transfer the burden of proceeding.

Rather, the burden of proceeding must be understood as a risk of non-production.⁵¹ That is to say, Section 312(d) places the risk of non-production on the Commission, and prohibits the Commission from issuing a cease and desist order where no evidence is produced on a material issue.⁵²

The language of the Decision does not indicate that appellant bore any such risk of non-production. But more importantly, the Decision was based upon evidence on *all* material issues. In no instance was a material issue decided on the basis of the absence of any evidence and an asserted consequent failure of respondent to bear a risk of non-production. Thus, there was no prejudice to appellant on this point.

The absence of prejudicial error on the burden of proof is likewise evident when that burden is more accurately viewed as a risk of non-persuasion.⁵³ In placing this risk on the Commission, Section 312(d) requires that issuance of a cease and desist order must be supported by affirmative findings, supported by substantial evidence, on all material issues. If the Commission regards the existence or nonexistence of a material fact to be in equipoise, an order cannot issue.

The Commission stated unequivocally concerning its allocation of the burden of proof that its language in the order to show cause "... *did nothing more than require respondents to submit information which the Commission is entitled to have.*" (JA 598) (emphasis added). These words conclusively demonstrate that in allocating the burden of proof, the Commission did not place upon appellant the risk of non-persuasion.⁵⁴

⁵¹ See James, *Civil Procedure*, §§7.5, 7.7 (1965).

⁵² Cf., *NLRB v. Mastro Plastics Corp.*, 354 F.2d 170, 178 (2d Cir. 1965), *cert. denied*, 384 U.S. 972 (1966).

⁵³ See James, *Civil Procedure*, §§7.5, 7.6 (1965).

⁵⁴ This is not to say that the term "burden of proof" does not ordinarily mean more than what the Commission attributed to it in this case. But the only question here is whether appellant in fact bore a risk of non-persuasion in contravention of Section 312(d). This was not a case in which there was an initial decision. The Commission alone interpreted its own show cause order, and made its own findings of fact and conclusions of law. Thus, its above-quoted words are conclusive of what "burden" appellant bore. Those words demonstrate that it was not a burden of non-persuasion.

Moreover, the Commission's Decision is completely based upon express findings of fact and conclusions of law. In no case was a material issue of fact or law decided against appellant because of an asserted failure of appellant to meet its burden of persuasion on that issue. Thus appellant was not prejudiced by an improper allocation of the burden of persuasion.

It is settled law that an appellate court must affirm the findings and conclusions of an administrative agency if they are supported by substantial evidence; and that the agency's decision will not be reversed for error unless that error was prejudicial. *Braniff Airways, Inc. v. CAB*, 126 U.S. App. D.C. 399, 379 F.2d 453 (1967); see 5 U.S.C. § 706,

As has been demonstrated, the Commission did not, in fact, misallocate the burden of proof in contravention of Section 312(d) of the Act. Moreover, the Decision demonstrates that in no instance was a finding, adverse to appellant, on any material fact or conclusion of law based upon an asserted failure of appellant to meet either a burden of production or a burden of persuasion. Appellant was thus not prejudiced by the allocation of the burden of proof, and this Court should not reverse the Commission on the basis of alleged error on this point.

CONCLUSION

The Commission's decision is affirmatively supported by substantial evidence on all material facts and conclusions. On the basis of such facts and conclusions, the Commission's statutory responsibility required the issuance of cease and desist orders against the General System. The Commission's decision, therefore, should be affirmed.

Respectfully submitted,

JAY E. RICKS

MARVIN J. DIAMOND

815 Connecticut Ave., N.W.
Washington, D.C. 20006

*Attorneys for Intervenor
TeleCable Corporation*

Of Counsel:

HOGAN & HARTSON
815 Connecticut Ave., N.W.
Washington, D.C. 20006

STATUTORY ADDENDUM

Section 4(j) of the Communications Act of 1934, as amended (47 U.S.C. § 154 (j)):

(j) The Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. No commissioner shall participate in any hearing or proceeding in which he has a pecuniary interest. Any party may appear before the Commission and be heard in person or by attorney. Every vote and official act of the Commission shall be entered of record, and its proceedings shall be public upon the request of any party interested. The Commission is authorized to withhold publication of records or proceedings containing secret information affecting the national defense.

Section 202(a) and (b) of the Communications Act of 1934, as amended (47 U.S.C. § 202 (a) and (b)):

(a) It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

(b) Charges or services, whenever referred to in this chapter include charges for, or services in connection with, the use of common carrier lines of communication, whether derived from wire or radio facilities, in chain broadcasting or incidental to radio communication of any kind.

Section 214(a) of the Communications Act of 1934, as amended (47 U.S.C. § 214 (a)):

(a) No carrier shall undertake the construction of a new line or of an extension of any line, or shall acquire or operate any line, or extension thereof, or shall engage in transmission over or by means of such additional or extended line, unless and until there

shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line: *Provided*, That no such certificate shall be required under this section for the construction, acquisition, or operation of (1) a line within a single State unless such line constitutes part of an interstate line, (2) local, branch, or terminal lines not exceeding ten miles in length, or (3) any line acquired under section 221 or 222 of this title: *Provided further*, That the Commission may, upon appropriate request being made, authorize temporary or emergency service, or the supplementing of existing facilities, without regard to the provisions of this section. No carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby: except that the Commission may, upon appropriate request being made, authorize temporary or emergency discontinuance, reduction, or impairment of service, or partial discontinuance, reduction, or impairment of service, without regard to the provisions of this section. As used in this section the term "line" means any channel of communication established by the use of appropriate equipment, other than a channel of communication established by the interconnection of two or more existing channels: *Provided, however*, That nothing in this section shall be construed to require a certificate or other authorization from the Commission for any installation, replacement, or other changes in plant, operation, or equipment, other than new construction, which will not impair the adequacy or quality of service provided.

Section 218 of the Communications Act of 1934, as amended (47 U.S.C. § 218):

The Commission may inquire into the management of the business of all carriers subject to this chapter, and shall keep itself informed as to the manner and method in which the same is conducted and as to technical developments and improvements in wire and radio communication and radio transmission of energy to the end that the benefits of new inventions and developments may be made available to the people of the United States. The Commission may obtain from such carriers and from persons directly or indirectly controlling or controlled by, or under direct or indirect common control with, such carriers full and

complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created.

Section 312(d) of the Communications Act of 1934, as amended (47 U.S.C. § 312 (d)):

In any case where a hearing is conducted pursuant to the provisions of this section, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Commission.

Section 403 of the Communications Act of 1934, as amended (47 U.S.C. § 403):

The Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which complaint is authorized to be made, to or before the Commission by any provision of this chapter, or concerning which any question may arise under any of the provisions of this chapter, or relating to the enforcement of any of the provisions of this chapter. The Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this chapter, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had, excepting orders for the payment of money.

